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Vernon's Texas Civil Statutes) by amending
Sections 1, 2, 3, 6, 9, 10, 11, 12, 13, and 19 and
repealing Sections 7 and 20.

By [Signature]

B. No. 609

A BILL TO BE ENTITLED

AN ACT

relating to continuation of the Texas Board of Examiners in the
Fitting and Dispensing of Hearing Aids and regulation of the
fitters and dispensers of hearing aid devices; *amending Chapter 366,
Acts of the 61st
Legislature, Regular Session, 1969, as amended (Article*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 1, 2, 3, 6, 9, 10, 11, 12, 13, and 19, *et seq.*
Chapter 366, Acts of the 61st Legislature, Regular Session, 1969,
as amended (Article 4566-1.01 *et seq.*, Vernon's Texas Civil
Statutes), are amended to read as follows:

Sec. 1. DEFINITIONS. In this Act, unless the context
requires a different definition:

(a) "Board" means the Texas Board of Examiners in the
Fitting and Dispensing of Hearing Aids.

(b) "License" means license issued by the Board under this
Act to a person authorized to fit and dispense hearing aids.

(c) "Temporary Training Permit" means a permit issued by the
Board to persons authorized to fit and dispense hearing aids only
under the supervision of a person who holds a license under this
Act.

(d) "Hearing aid" means any instrument or device designed
for, or represented as, aiding, improving or correcting defective
human hearing, but as used herein shall not mean repair services,
replacements for defective parts and shall not include batteries,
cords and accessories.

(e) "Sell" or "sale" includes a transfer of title or of the right to use by lease, bailment, or any other contract. Provided for the purpose of this Act, the term "sell" or "sale" shall not include sales at wholesale by manufacturers to persons licensed under this Act, or to distributors for distribution and sale to persons licensed under this Act.

(f) "Fitting and Dispensing hearing aids" means the measurement of human hearing by the use of an audiometer or by any means for the purpose of making selections, adaptations and/or sales of hearing aids. The term also includes the sale of hearing aids, and the making of impressions for earmolds to be used as part of the hearing aid.

(g) "30-day trial period" means the period in which a person may cancel the purchase of a hearing aid.

Sec. 2. BOARD OF EXAMINERS. (a) The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids is hereby created. The Board shall be composed of nine members with the following qualifications, to-wit:

(1) Six of such members shall possess the necessary qualifications to fit and dispense hearing aids in this state and have been residents of this state actually engaged in fitting and dispensing hearing aids for at least five years immediately preceding their appointment. No more than two of such six members shall be employed by, franchised by, or associated exclusively with the same hearing aid manufacturer;

(2) One board member must be a member of the general public
A person is eligible for appointment as a public member if ⁿ ~~th~~

17. ^{no} person ~~and~~ the person's spouse ^{is} ~~are~~ not licensed by an
occupational regulatory agency in the field of health care; ^{is} ~~are not~~
employed by and do ^{es} not participate in the management of a business
entity or other organization that provides health care services or
that sells, manufactures, or distributes health care supplies or
equipment; and do ^{es} not own, control, or have, directly or
indirectly, more than a 10 percent interest in a business entity or
other organization that provides health care services or that
sells, manufactures, or distributes health care supplies or
equipment [One-of-such-members-shall-be-a--citizen--of--the--United
States--and--a--resident-of-this-state-for-a-period-of-at-least-two
years-immediately-preceding-his-appointment-and-such--member--shall
not--have--a--financial--interest--in--a--hearing-aid-manufacturing
company-or-a-wholesale-hearing-aid-company];

(3) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment, shall be an active practicing physician or surgeon duly licensed to practice in this state by the Texas State Board of Medical Examiners, and specialize in the practice of otolaryngology. Such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale or retail hearing aid company; and

(4) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment and shall be an active practicing audiologist. Such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale or

1 retail hearing aid company.

2 (b) One who has served two full consecutive terms on the
3 Board shall not be eligible for a reappointment to the Board for a
4 period of 12 months immediately following the expiration of the
5 second full term.

6 (c) In the event of death, resignation or removal of any
7 members, the vacancy of the unexpired terms shall be filled by the
8 Governor in the same manner as other appointments. Each appointee
9 to the Board shall, within 15 days from the date of his
10 appointment, qualify by taking the constitutional oath of office.
11 Upon presentation of such oath, the Secretary of State shall issue
12 commissions to appointees as evidence of their authority to act as
13 members of the Board.

14 (d) Members hold office for staggered terms of six years and
15 each member shall continue until a successor is appointed and
16 qualifies. [~~The members of the initial Board, to be appointed by~~
17 ~~the Governor to take office on the effective date of this Act,~~
18 ~~shall be divided into three classes, to wit: Class One, Class Two,~~
19 ~~and Class Three, and their terms of office shall be determined by~~
20 ~~lot at the first meeting of the Board. The three Class One members~~
21 ~~shall hold office for two years, and the three Class Two members~~
22 ~~shall hold office for four years, and the three Class Three members~~
23 ~~shall hold office for six years respectively, from the time of~~
24 ~~their appointment. Biennially thereafter, the Governor shall~~
25 ~~appoint three members of the Board to hold office for a term of six~~
26 ~~years.]~~

27 (e) The Board shall be represented by the Attorney General

1 and the District and County Attorneys of the state.

2 (f) A person who is required to register as a lobbyist under
3 Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973,
4 as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may
5 not serve as a member of the Board or act as the general counsel to
6 the Board.

7 (g) A member or employee of the Board may not be an officer,
8 employee, or paid consultant of a statewide or national trade
9 association in the hearing aid industry. A member or employee of
10 the Board may not be related within the second degree by affinity
11 or within the second degree by consanguinity to a person who is an
12 officer, employee, or paid consultant of a statewide or national
13 trade association in the regulated industry.

14 (h) It is a ground for removal from the Board if a member:

15 (1) does not have at the time of appointment the
16 qualifications required by Subsection (a) of this section for
17 appointment to the Board;

18 (2) does not maintain during the service on the Board the
19 qualifications required by Subsection (a) of this section for
20 appointment to the Board; or

21 (3) violates a prohibition established by Subsection (f) or
22 (g) of this section.

23 (i) The validity of an action of the Board is not affected
24 by the fact that it was taken when a ground for removal of a member
25 of the Board existed.

26 (j) [†] The Texas Board of Examiners in the Fitting and
27 Dispensing of Hearing Aids is subject to the Texas Sunset Act

1 (Article 5429k, ✓ Vernon's Texas Civil Statutes); and unless
2 continued in existence as provided by that Act the board is
3 abolished, and this Act expires effective September 1, 1993 [1981].

4 Sec. 3. BOARD ORGANIZATION AND MEETINGS. Within 60 days
5 after their appointment and qualification the initial Board shall
6 hold its first meeting and elect a President, Vice-President, and
7 Secretary-Treasurer. The term of office for all officers of the
8 Board shall be for a period of one year.

9 The Board shall hold regular meetings at least twice a year
10 at which an examination of applicants for license shall be given.
11 [~~Not--less--than--30--days--notice--of--such--meeting--shall--be--given--by~~
12 ~~publication--in--at--least--three--daily--newspapers---of---general~~
13 ~~circulation--to--be--selected--by--the--Board--Written--notice--of--such~~
14 ~~regular--meetings--of--the--Board--shall--be--given--to--the--members--by--the~~
15 ~~Secretary-Treasurer--of--the--Board--by--certified--mail--not--less--than--30~~
16 ~~days--prior--to--the--date--of--such--regular--meeting--]~~ Special meetings
17 of the Board shall be held upon [~~the-written~~] request of a majority
18 of the members or upon the call of the President. [~~Written--notice~~
19 ~~of--such--special--meetings--of--the--Board--shall--be--given--to--members--by~~
20 ~~the--Secretary-Treasurer--of--the--Board--by--certified--mail--not--less~~
21 ~~than--30--days--prior--to--the--date--of--the--special--meetings--]~~ A
22 majority of the Board shall constitute a quorum for the transaction
23 of business and should a quorum not be present on the day appointed
24 for any meeting, those present may adjourn from day to day until a
25 quorum be present provided such period shall not be longer than
26 three successive days.

27 Sec. 6. EXAMINATION: APPLICATION. (a) Every person

1 desiring to engage in fitting and dispensing hearing aids in the
2 State of Texas shall be required to pass an examination given by
3 the Texas Board of Examiners in the Fitting and Dispensing of
4 Hearing Aids.

5 (b) The applicant shall make application, furnishing to the
6 Secretary-Treasurer of the Board on forms to be furnished by the
7 Board, sworn evidence that he has attained the age of majority [18
8 years,--is--of--good--moral--character,--is--free--of--contagious-or
9 infectious-disease,] and has graduated from an accredited high
10 school or equivalent, and such other information as the Board may
11 deem necessary for the enforcement of this Act.

12 (c) The examination shall consist of written, oral or
13 practical tests that shall be objective in method and applied in a
14 consistent manner. The examination shall cover the following areas
15 as they relate to the fitting and dispensing of hearing aids [in
16 the--following--areas-as-they-pertain-to-the-fitting-and-dispensing
17 of-hearing-aids,--to-wit]:

- 18 (1) Basic physics of sound;
- 19 (2) The structure and function of hearing aids;
- 20 (3) Fitting of hearing aids;
- 21 (4) Pure tone audiometry, including air conduction testing
22 and bone conduction testing;
- 23 (5) Live voice and/or record voice speech audiometry;
- 24 (6) Masking when indicated;
- 25 (7) Recording and evaluation of audiograms and speech
26 audiometry to determine the hearing aid candidacy;
- 27 (8) Selection and adaption of hearing aids and testing of

1 hearing aids; and

2 (9) Taking of earmold impressions.

3 (d) No part of the examination shall consist of tests
4 requiring knowledge of the diagnosis and/or treatment of any
5 disease or injury to the human body.

6 (e) Each applicant shall be given due notice of the date and
7 place of the examination and the subjects, areas, and/or skills
8 that will be included within such examination, and there shall be
9 no changes in said subjects, areas, and/or skills after the date of
10 the examination has been announced and publicized [~~nor shall there~~
11 ~~be more than one change or group of changes in any one calendar~~
12 ~~year~~]. All examinations shall be conducted in writing and by such
13 other means as the Board shall determine adequate to ascertain the
14 qualifications of applicants. Upon reexamination, a person who has
15 previously failed shall be examined only on those portions of the
16 exam which he failed. [~~All applicants examined during a given~~
17 ~~calendar year shall be given the same examination~~] Every
18 applicant successfully passing the examination and meeting all the
19 requirements of this Act shall be registered by the Board as
20 possessing the qualifications required by this Act and shall
21 receive from the Board a license to fit and dispense hearing aids
22 in this state.

23 (f) The Board, in its discretion, may refuse to examine an
24 applicant if he has been convicted of a felony or a misdemeanor
25 that involved moral turpitude.

26 (g) Within 30 days after the day on which a licensing
27 examination is administered under this Act, the Board shall notify

1 each examinee of the results of the examination. However, if an
2 examination is graded or reviewed by a national testing service,
3 the Board shall notify examinees of the results of the examination
4 within two weeks after the day that the Board receives the results
5 from the testing service. If the notice of the examination results
6 will be delayed for longer than 90 days after the examination date,
7 the Board shall notify the examinee of the reason for the delay
8 before the 90th day. If requested in writing by a person who fails
9 the licensing examination administered under this Act, the Board
10 shall furnish the person with an analysis of the person's
11 performance on the examination.

12 Sec. 9. TEMPORARY TRAINING PERMIT. (a) The Board shall
13 grant a temporary training permit to fit and dispense hearing aids
14 to any person applying to the Board who has never taken the
15 examination provided in the Act and who possesses the
16 qualifications in Subsection (b) of Section 6, of this Act, upon
17 written application to the Secretary-Treasurer of the Board, the
18 applicant shall make application on forms to be furnished by the
19 Board furnishing sworn evidence that he possesses the
20 qualifications contained in Subsection (b), Section 6, of this Act,
21 that he has never taken the examination provided in this Act, and
22 that he has never previously been issued a temporary training
23 permit to fit and dispense hearing aids by the Board.

24 (b) The application for a temporary permit shall be
25 accompanied by the affidavit of a person duly licensed and
26 qualified to fit and dispense hearing aids in this state. The
27 accompanying affidavit shall state that the applicant, if granted a

1 temporary training permit, will be supervised by the affiant in all
2 work done by applicant under such temporary training permit, that
3 affiant will notify the Board within 10 days following applicant's
4 terminating of supervision by affiant.

5 (c) A temporary training permit shall authorize the holder
6 thereof, to fit and dispense hearing aids for a period of one year
7 or until the holder thereof shall have successfully passed the
8 examination required for a license under this Act, whichever occurs
9 first.

10 (d) A temporary training permit shall automatically become
11 void at the end of the period of 6 months from the date of its
12 issuance unless extended for an additional period not to exceed 6
13 months by the Board. The Board shall never extend a temporary
14 training permit more than one time.

15 (e) The Board shall establish educational guidelines, both
16 formal and practical, for the training of temporary permit holders.
17 The training guidelines shall include directions to the training
18 supervisor about subject matter to be taught, length of the
19 training period, extent of trainee contact with the public, and
20 responsibility of the training supervisor for direct supervision of
21 all aspects of the training period.

22 Sec. 10. GROUND FOR DISCIPLINARY ACTIONS [REFUSAL--TO
23 LICENSE-AND-REVOCATION-OR--SUSPENSION--OF--LICENSE--GROUNDS]. The
24 Board shall revoke or suspend a permit or license, probate a person
25 whose permit or license has been suspended, or reprimand a
26 permittee or licensee for any of the following violations [The
27 Board--may,--in--its--discretion,--refuse-to-issue-a-license-to-any

1 applicant-and-may-cancel,-revoke-or-suspend-the--operation--of--any
2 license-by-it-granted,-for-any-of-the-following-reasons]:

3 [(1) --The---applicant---or---licensee---is--guilty--of--gross
4 immorality-

5 [(2) --The-applicant-or-licensee-is-unfit--or--incompetent--by
6 reason-of-negligence-]

7 (1) [(3)] The temporary trainee [applicant] or licensee is
8 guilty of any fraud, deceit or misrepresentation in the fitting and
9 dispensing of hearing aids or in his seeking of a license under
10 this Act.

11 (2) [(4)] The temporary trainee [applicant] or licensee is
12 [has-been] convicted of a felony or a misdemeanor which involves
13 [involved] moral turpitude.

14 (3) The temporary trainee or licensee is unable to fit and
15 dispense hearing aids with reasonable skill and safety to customers
16 by reason of incompetence, age, illness, drunkenness, excessive use
17 of drugs, narcotics, chemicals; or any other type of material or as
18 a result of any condition causing the temporary trainee or licensee
19 to become mentally or physically incapable as determined by a court
20 of competent jurisdiction [(5) --The--applicant--or--licensee--is--a
21 habitual--drunkard--or-is-addicted-to-the-use-of-morphine,-cocaine,
22 or-other-drugs-having-similar-effects-or-has-become-insane--or--has
23 been-adjudged-by-a-court-of-competent-jurisdiction-to-be-of-unsound
24 mind].

25 (4) [(6)] The temporary trainee [applicant] or licensee has
26 violated any of the provisions of this Act or Board rules.

27 (5) [(7)] The licensee has knowingly, directly or indirectly

1 employed, hired, procured, or induced a person not licensed to fit
2 and dispense hearing aids in this state, to so fit and dispense
3 hearing aids.

4 (6) [(8)] The licensee aids or abets any person not duly
5 licensed under this Act in the fitting or dispensing of hearing
6 aids.

7 (7) [(9)] The licensee lends, leases, rents, or in any other
8 manner places his license at the disposal or in the service of any
9 person not licensed to fit and dispense hearing aids in this state.

10 (8) [(10)] The licensee knowingly used or caused or promoted
11 the use of any advertising matter, promotional literature,
12 guarantees, warranty, disseminated or published with misleading,
13 deceiving or false information. It is the intention of the
14 Legislature that the provisions of this subdivision [Subsection
15 (10)--and--the--following--Subsection--(11)] be interpreted insofar as
16 possible to coincide with the orders and rules of the Federal Trade
17 Commission on such subjects.

18 [(11)--The--licensee--advertised--a--particular--model,--type--or
19 kind--of--hearing--aid--for--sale--when--purchasers--or--prospective
20 purchasers--responding--to--the--advertisement--cannot--purchase--or--are
21 dissuaded--from--purchasing--the--advertised--model,--type,--or--kind--when
22 it--is--established--that--the--purpose--of--the--advertisement--is--to
23 obtain--prospects--for--the--sale--of--a--different--model,--type--or--kind
24 than--was--advertised.]

25 (9) [(12)] The licensee represented that the service or
26 advice of a person licensed to practice medicine by the Texas State
27 Board of Medical Examiners is used or made available in the

1 selection, fitting, adjustment, maintenance, or repair of a hearing
2 aid when such representation was not true.

3 (10) [(13)] The licensee used the term "doctor," "clinic" or
4 any like words, abbreviations or symbols in the conduct of his
5 business which would tend to connote that the licensee was a
6 physician or surgeon.

7 [(14)--The-licensee-defamed-another-licensee-under--this--Act
8 by--falsely--imputing--to--him--dishonorable--conduct--inability-to
9 perform-contracts--questionable-credit-standing--or-any-other-false
10 representation-or-falsely-disparaging-the-products--of--such--other
11 licensee--in--any-respect--or-the-business-methods--selling-prices,
12 values--credit-terms--policies--or-services-of-such-other-licensee-

13 [(15)--The-licensee-displayed--competitive--products--in--his
14 place--of--business--or--in--the--advertising-in-such-manner-as-to
15 falsely-disparage-them-

16 [(16)--The-licensee-quoted-prices-of-competitive-hearing-aids
17 or-devices-without-disclosing-that-the-prices-were-not-the-present,
18 correct--current--prices--or--falsely--showed--demonstrated--or
19 represented--competitive--hearing-aids-models-as-being-the-correct,
20 current-model-of-such-hearing-aids-

21 [(17)--The-licensee--imitated--or--simulated--the--trademark,
22 tradename--brand--or-label-of-another-licensee-under-this-Act-with
23 the--intent--to--mislead--or--deceive--purchasers--or--prospective
24 purchasers-

25 [(18)--The--licensee--used-in-his-advertising-the-name--model
26 name-or-trademark-of-a-particular-manufacturer-of-hearing-aids-with
27 the-intent-to-falsely-imply-a-relationship-with--such--manufacturer

1 ~~that-does-not-exist-~~]

2 (11) [~~19~~] The licensee obtained or attempted to obtain
3 information concerning the business of another licensee under this
4 Act by bribery, or attempting to bribe an employee or agent of such
5 other licensee or by the impersonation of one in authority.

6 (12) [~~20~~] The licensee directly or indirectly gave, or
7 offered to give or permitted or caused to be given money or
8 anything of value to any person who advises others in a
9 professional capacity as an inducement to influence such person to
10 influence those persons such person advises in a professional
11 capacity to purchase or contract to purchase products sold or
12 offered for sale by licensee or to refrain from purchasing or
13 contracting to purchase products sold or offered for sale by any
14 other licensee under this Act.

15 (13) [~~21~~] The licensee falsely represented to a purchaser
16 that a hearing aid was "custom-made," "made to order,"
17 "prescription-made" or any other representations that such hearing
18 aid was specially fabricated for the purchaser.

19 (14) [~~22~~] The licensee refused to accept responsibility
20 for the acts of a temporary training permittee in a licensee's
21 employ and under licensee's supervision.

22 (15) [~~23~~] The licensee with fraudulent intent, engaged in
23 the fitting and dispensing of hearing aids under a false name or
24 alias.

25 [~~24~~]-The-licensee-had-failed--to--actively--engage--in--the
26 fitting--and--dispensing--of--hearing--aids--for--a-period-of-three
27 consecutive-years-]

1 Sec. 11. DISCIPLINARY ACTIONS [PROCEDURE]. (a) If the
2 Board proposes to refuse a person's application for examination, to
3 suspend or revoke a person's license, or to probate or reprimand a
4 person, the person is entitled to a hearing before the Board.

5 (b) The proceedings are governed by the Administrative
6 Procedure and Texas Register Act, as amended (Article 6252-13a,
7 Vernon's Texas Civil Statutes).

8 (c) [~~a~~] ~~Proceedings [for-revocation--or--suspension--of--a~~
9 ~~license]~~ shall be commenced by filing charges with the Board in
10 writing and under oath. The charges may be made by any person or
11 persons.

12 (d) [~~b~~] The president of the Board shall fix a time and
13 place for a hearing and shall cause a copy of the charges, together
14 with a notice of the time and place fixed for the hearing to be
15 served upon the applicant or licensee against whom charges have
16 been filed at least 30 days prior thereto. Service of such charges
17 and notice of hearing thereon may be given by certified mail to the
18 last known address of such licensee or applicant.

19 (e) [~~c~~] At the hearing, such applicant or licensee shall
20 have the right to appear either personally or by counsel or both to
21 produce witnesses, and to have subpoenas issued by the Board and
22 cross-examine opposing or adverse witnesses.

23 (f) [~~d~~] The Board shall not be bound by strict rules of
24 procedure or by the laws of evidence in the conduct of its
25 proceedings but the determination shall be founded upon sufficient
26 legal evidence to sustain it.

27 (g) [~~e~~] The Board shall determine the charges upon their

1 merits. The Board shall enter an order in the permanent records of
2 the Board setting forth the findings of fact and law of the Board
3 and its action thereon. A copy of such order of the Board shall be
4 mailed to such applicant or licensee to his last known address by
5 certified mail.

6 (h) [~~f~~] Any person whose license to fit and dispense
7 hearing aids has been refused or has been cancelled, revoked or
8 suspended by the Board, may, within 20 days after making and
9 entering of such order, take an appeal to any district court of
10 Travis County or any district court of the county of his residence.

11 (i) [~~g~~--A--case--reviewed--under--the--provisions--of--this
12 section--proceeds--in--such--district--court--by--trial--de--novo--as--that
13 term--is--used--and--understood--in--appeals--from--justice--of--the--peace
14 courts--to--the--county--courts--of--this--state.] Appeal from the
15 judgment of such district court will lie as other civil cases.

16 (j) [~~h~~] Upon application, the Board may reissue a license
17 to fit and dispense hearing aids to a person whose license has been
18 cancelled or revoked but such application shall not be made prior
19 to the expiration of a period of six months after the order of
20 cancellation or revocation has become final, and such application
21 shall be made in such manner and form as the Board may require.

22 Sec. 12. FEES AND EXPENSES. [~~a~~--The--Board--shall--charge--a
23 fee--of--\$25.00--for--issuing--a--temporary--training--permit,--which--fee
24 must--accompany--the--application--for--a--temporary--training--permit--

25 [~~b~~--The--Board--shall--charge--a--fee--of--\$35.00--for--examining--an
26 applicant--for--a--license,--which--fee--must--accompany--the--application--

27 [~~c~~--The--Board--shall--charge--a--fee--of--\$50.00--for--issuing--a

1 ~~license-~~

2 ~~[(1) --Any person making application for a license without an~~
3 ~~examination as provided in Sections 7 and 8 must submit such fee~~
4 ~~with such application.]~~

5 (a) The Board shall establish reasonable and necessary fees
6 for the administration of this Act.

7 (b) [(2)] Every person passing the examination and meeting
8 the requirements of the Board shall be notified that he is eligible
9 for such license upon payment of the fee herein provided. Such
10 notice shall be by certified mail at the address given on his
11 examination papers. The fee for issuance of such license must be
12 paid by the applicant within 90 days after having been notified.
13 Failure to pay such fee within such time shall constitute a waiver
14 of the right to such person to obtain his license.

15 ~~[(d) --The Board shall charge a fee of \$5.00 for each~~
16 ~~duplicate license or duplicate temporary training permit.]~~

17 (c) [(e)] The Secretary-Treasurer of the Board shall, on or
18 before the 10th day of each month, remit to the State Treasurer all
19 of the fees collected by the Board during the preceding month for
20 deposit in the General Revenue Fund.

21 (d) Each member of the Board is entitled to a per diem as
22 set by legislative appropriation for each day that the member
23 engages in the business of the Board. ~~[(f) --Each member of the~~
24 ~~Board is entitled to a per diem of \$30 for each day he is engaged~~
25 ~~in performing the duties of his office.]~~ The travel expenses
26 allowance for members of the Board and its employees shall be
27 provided in the General Appropriations Act. The executive director

1 of the Board shall be allowed his actual expenses incurred while
2 traveling on official business for the Board.

3 (e) [~~(g)~~] The number of days for which compensation may be
4 paid to members of the Board shall not exceed two days in any
5 calendar month except in those months in which examinations are
6 held, but compensations may never be allowed to exceed six days in
7 those months in which examinations are held.

8 (f) [~~(h)~~] The Board may authorize all necessary
9 disbursements to carry out the provisions of this Act, including
10 payment of the premium on the bond of the Secretary-Treasurer,
11 stationery expenses, purchase and maintain or rent equipment and
12 facilities necessary to carry out the examinations of applications
13 for license; pay for printing of all licenses; rent and furnish an
14 office to maintain the permanent records of the Board.

15 (g) [~~(i)~~] Funds for the administration of this Act shall be
16 provided by the General Appropriations Act from the General Revenue
17 Fund.

18 [~~(j)--The-balance-of-all-money-remaining-in-the-"Fitting--and~~
19 ~~Dispensing--of--Hearing--Aids--Fund"--account-on-August-31,-1979,-is~~
20 ~~transferred-to-the-General-Revenue-Fund.~~]

21 Sec. 13. RENEWAL OF LICENSE. (a) Each license to fit and
22 dispense hearing aids shall be issued for the term of one year and
23 shall, unless suspended or revoked, be renewed annually on
24 September 1 upon payment of the renewal fee.

25 (b) A person may renew an unexpired license by paying to the
26 Board before the expiration date of the license the required
27 renewal fee.

1 (c) If a person's license has been expired for not longer
2 than 90 days, the person may renew the license by paying to the
3 Board the required renewal fee and a fee that is one-half of the
4 examination fee for the license.

5 (d) If a person's license has been expired for longer than
6 90 days but less than two years, the person may renew the license
7 by paying to the Board all unpaid renewal fees and a fee that is
8 equal to the examination fee for the license.

9 (e) If a person's license has been expired for two years or
10 longer, the person may not renew the license. The person may
11 obtain a new license by submitting to reexamination and complying
12 with the requirements and procedures for obtaining an original
13 license.

14 (f) Before a license can be renewed, the Board shall require
15 certification that all testing equipment, both portable and
16 stationary, used by the licensee has been calibrated within one
17 year prior to the renewal date. [On-or-before--the--first--day--of
18 January,--1972,--every--licensee--under--this--Act--shall--pay--to--the
19 Secretary-Treasurer-of-the-Board-an-annual-renewal--fee--of--\$67.50
20 for-the-renewal-of-his-license-to-fit-and-dispense-hearing-aids-for
21 the--year--1972,---On-or-before-the-first-day-of-January,--1973,--and
22 every-year-thereafter,--every--licensee--under--this--Act--shall--pay--to
23 the--Secretary-Treasurer--of--the--Board--an--annual-renewal-fee-of
24 \$125.00-for-renewal-of-his-license-to-fit-and-dispense-hearing-aids
25 for-the-current-year,--On-receipt-of-said-renewal--fee,--the--Board
26 shall-issue-an-annual-renewal-certificate-bearing-the-number-of-his
27 license,--the--year--for--which--it--is--renewed,--and--such--other

1 information from the records of the Board as the Board may deem
2 necessary for the proper enforcement of this Act.

3 [(b) -- When a licensee shall fail to pay his annual renewal
4 fee by February 1st of each year, it shall be the duty of the Board
5 to notify such licensee by certified mail at his last known address
6 that said annual renewal fee is due and unpaid, if the annual
7 renewal fee is not paid within 60 days from the said date of
8 mailing such notice, the Board shall then cancel said license.]

9 (g) [(e)] Fitting and dispensing hearing aids without an
10 annual renewal certificate for the current year as provided herein
11 shall have the same force and effect and be subject to the same
12 penalties as fitting and dispensing hearing aids without a license.

13 [(d) -- After the Board shall have cancelled a license for
14 nonpayment of the annual renewal fee, the Board may refuse to issue
15 a new license until such fitter and dispenser of hearing aids has
16 paid all previous unpaid annual fees.]

17 (h) [(e)] The Board shall issue a duplicate license to any
18 licensee whose license has been lost or destroyed and the Board
19 shall have the authority to prescribe the procedure and
20 requirements for the issuance of the duplicate license.

21 Sec. 19. EXCEPTIONS. Nothing in this Act shall be construed
22 to apply to the following:

23 (1) Persons engaged in the practice of measuring human
24 hearing as a part of the academic curriculum of an accredited
25 institution of higher learning, provided such persons or their
26 employees do not sell hearing aids.

27 (2) [Persons engaged in the practice of measuring human

hearing--as--a--part--of--a--program--conducted--by---a---nonprofit
organization,--provided-such-organization-or-its-employees-does-not
sell-hearing-aids-

[~~3~~] Physicians and surgeons duly licensed by the Texas
State Board of Medical Examiners and qualified to practice in the
State of Texas.

[~~4~~--Persons-employed-and-directly-supervised-by-a-physician
and-surgeon-to-test-or-measure-human-hearing,--provided-such-persons
do-not-sell-hearing-aids-]

(3) An audiologist certified by the American Speech and
Hearing Association engaged in the measurement of human hearing
by the use of an audiometer or by any means for the purpose of
making selections and adaptations of or recommendations for a
hearing aid, provided such persons do not sell hearing aids.

SECTION 2. Chapter 366, ~~Acts~~ of the 61st Legislature,
Regular Session, ~~1969~~, as amended (Article 4566-1.01 et seq.,
Vernon's Texas Civil Statutes), is amended by adding Sections 12A
and 12B to read as follows:

Sec. 12A. ADVERTISEMENTS. The Board may not adopt rules
restricting competitive bidding or advertising by a person
regulated by the Board except to prohibit false, misleading, or
deceptive practices by the person. The Board may not include in
its rules to prohibit false, misleading, or deceptive practices by
a person regulated by the Board a rule that:

(a) restricts the person's use of any medium for
advertising;

(b) restricts the person's personal appearance or use of his

1 personal voice in an advertisement;

2 (c) relates to the size or duration of an advertisement by
3 the person; or

4 (d) restricts the person's advertisement under a trade name.

5 Sec. 12B. CONSUMER INFORMATION AND COMPLAINTS. (a) The
6 Board shall prepare information of consumer interest describing the
7 regulatory functions of the Board and describing the Board's
8 procedures by which consumer complaints are filed with and resolved
9 by the Board. The Board shall make information available to the
10 general public and appropriate state agencies.

11 (b) Each written contract for services in this state of a
12 licensed hearing aid fitter and dispenser shall contain the name,
13 mailing address, and telephone number of the Board. There shall at
14 all times be prominently displayed in the place of business of each
15 licensee regulated under this Act, a sign containing the name,
16 mailing address, and telephone number of the Board and a statement
17 informing consumers that complaints against licensees can be
18 directed to the Board.

19 (c) Each person who buys a hearing aid shall be allowed a
20 30-day trial period before the sale is final.

21 (d) The Board shall establish guidelines for a 30-day trial
22 period on every hearing aid purchased from a licensed hearing aid
23 fitter and dispenser.

24 (e) The Board shall keep an information file about each
25 complaint filed with the Board relating to a licensee. If a
26 written complaint is filed with the Board relating to a licensee,
27 the Board, at least as frequently as quarterly and until final

1 disposition of the complaint, shall notify the parties to the
2 complaint of the status of the complaint unless the notice would
3 jeopardize an undercover investigation.

4 SECTION 3. A rule adopted by the Texas Board of Examiners in
5 the Fitting and Dispensing of Hearing Aids before September 1,
6 1981, that conflicts with Chapter 366, Acts of the 61st
7 Legislature, Regular Session, 1969 (Article 4566-1.01 et seq.,
8 Vernon's Texas Civil Statutes), as amended by this Act, is void.
9 Within 90 days after September 1, 1981, the board shall repeal the
10 rule.

11 SECTION 4. A person holding office as a member of the Texas
12 Board of Examiners in the Fitting and Dispensing of Hearing Aids on
13 the effective date of this Act continues to hold the office for the
14 term for which the member was originally appointed.

15 SECTION 5. Sections 7 and 20, Chapter 366, Acts of the 61st
16 Legislature, Regular Session, 1969 (Article 4566-1.01 et seq.,
17 Vernon's Texas Civil Statutes), are repealed.

18 SECTION 6. This Act takes effect September 1, 1981.

19 SECTION 7. The importance of this legislation and the
20 crowded condition of the calendars in both houses create an
21 emergency and an imperative public necessity that the
22 constitutional rule requiring bills to be read on three several
23 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE SUBSTITUTE FORM

April 2, 1981

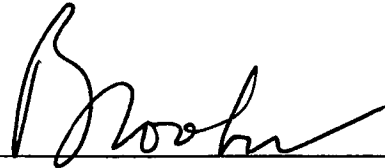
Austin, Texas

Date of report to Senate

Honorable William P. Hobby
President of the Senate

Sir:

We, your Committee on HUMAN RESOURCES to which was referred
S B. No. 604, have had the same under consideration, and I am instructed to report it back to the
Senate with the recommendation that it do not pass, but that the Committee Substitute adopted in lieu
thereof do pass and be printed.



Chairman

» TWO copies of the Committee Substitute and TWO copies of this form to the original bill and retain one copy of this form for your file.

Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), by amending sections 1, 2, 3, 6, 9, 10, 11, 12, 13, and 19; adding sections 12A and 12B and Subsection (e) to Section 14; and repealing Subdivision (7), Subsection (a), Section 15 and Sections 7 and 20.

By DOGGETT

S. B. No. 604

Substitute the following for S. B. No. 604:

By Doggett

C. S. S. B. No. 604

A BILL TO BE ENTITLED

AN ACT

relating to continuation of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids and regulation of the fitters and dispensers of hearing aid devices; *amending Chapter 366,*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 1, 2, 3, 6, 9, 10, 11, 12, 13, and 19, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), are amended to read as follows:

"Sec^{tion} 1. DEFINITIONS. In this Act, unless the context requires a different definition:

"(a) "Board" means the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.

"(b) "License" means license issued by the Board under this Act to a person authorized to fit and dispense hearing aids.

"(c) "Temporary Training Permit" means a permit issued by the Board to persons authorized to fit and dispense hearing aids only under the supervision of a person who holds a license under this Act.

"(d) "Hearing aid" means any instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing, but as used herein shall not mean repair services, replacements for defective parts and shall not include batteries, cords and accessories.

replaced by House Substitute

4/2/81
4/6/81

1 "(e) 'Sell' or 'sale' includes a transfer of title or of the
2 right to use by lease, bailment, or any other contract. Provided,
3 for the purpose of this Act, the term 'sell' or 'sale' shall not
4 include sales at wholesale by manufacturers to persons licensed
5 under this Act, or to distributors for distribution and sale to
6 persons licensed under this Act.

7 "(f) 'Fitting and Dispensing hearing aids' means the
-8 measurement of human hearing by the use of an audiometer or by any
9 means for the purpose of making selections, adaptations and/or
10 sales of hearing aids. The term also includes the sale of hearing
11 aids, and the making of impressions for earmolds to be used as a
12 part of the hearing aid.

13 "(g) '30-day trial period' means the period in which a person
14 may cancel the purchase of a hearing aid:

15 "^{10M}Sec 2. BOARD OF EXAMINERS. (a) The Texas Board of
16 Examiners in the Fitting and Dispensing of Hearing Aids is hereby
17 created. The Board shall be composed of nine members with the
18 following qualifications, to-wit:

19 "(1) Six of such members shall possess the necessary
20 qualifications to fit and dispense hearing aids in this state and
21 have been residents of this state actually engaged in fitting and
22 dispensing hearing aids for at least five years immediately
23 preceding their appointment. No more than two of such six members
24 shall be employed by, franchised by, or associated exclusively with
25 the same hearing aid manufacturer;

26 "(2) One board member must be a member of the general public.
27 A person is eligible for appointment as a public member if the

1 person and the person's spouse: are not licensed by an
2 occupational regulatory agency in the field of health care; are not
3 employed by and do not participate in the management of a business
4 entity or other organization that provides health-care services or
5 that sells, manufactures, or distributes health-care supplies or
6 equipment; and do not own, control, or have, directly or
7 indirectly, an interest in a business entity or
8 other organization that provides health-care services or that
9 sells, manufactures, or distributes health-care supplies or
10 equipment [One-of-such-members-shall-be-a-citizen-of-the-United
11 States--and--a--resident-of-this-state-for-a-period-of-at-least-two
12 years-immediately-preceding-his-appointment-and-such-member-shall
13 not-have-a-financial-interest-in-a-hearing-aid-manufacturing
14 company-or-a-wholesale-hearing-aid-company];

15 "(3) One of such members shall be a citizen of the United
16 States and a resident of this state for a period of at least two
17 years immediately preceding his appointment, shall be an active
18 practicing physician or surgeon duly licensed to practice in this
19 state by the Texas State Board of Medical Examiners, and specialize
20 in the practice of otolaryngology. Such member shall not have a
21 financial interest in a hearing aid manufacturing company or a
22 wholesale or retail hearing aid company; and

23 "(4) One of such members shall be a citizen of the United^{3/4}
24 States and a resident of this state for a period of at least two
25 years immediately preceding his appointment and shall be an active
26 practicing audiologist. Such member shall not have a financial
27 interest in a hearing aid manufacturing company or a wholesale or

1 retail hearing aid company.

2 "(b) One who has served two full consecutive terms on the
3 Board shall not be eligible for a reappointment to the Board for a
4 period of 12 months immediately following the expiration of the
5 second full term.

6 "(c) In the event of death, resignation or removal of any
7 members, the vacancy of the unexpired terms shall be filled by the
8 Governor in the same manner as other appointments. Each appointee
9 to the Board shall, within 15 days from the date of his
10 appointment, qualify by taking the constitutional oath of office.
11 Upon presentation of such oath, the Secretary of State shall issue
12 commissions to appointees as evidence of their authority to act as
13 members of the Board.

14 "(d) Members hold office for staggered terms of six years, and
15 each member shall continue until a successor is appointed and
16 qualifies. [The-members-of-the-initial-Board,-to-be--appointed--by
17 the--Governor--to--take--office--on-the-effective-date-of-this-Act,
18 shall-be-divided-into-three-classes,-to-wit---Class-One,-Class-Two,
19 and-Class-Three,-and-their-terms-of-office-shall-be--determined--by
20 lot-at-the-first-meeting-of-the-Board.-.-The-three-Class-One-members
21 shall--hold--office--for-two-years,-and-the-three-Class-Two-members
22 shall-hold-office-for-four-years,-and-the-three-Class-Three-members
23 shall-hold-office-for-six-years--respectively,-from--the--time--of
24 their--appointment.-.-Biennially--thereafter,-the--Governor--shall
25 appoint-three-members-of-the-Board-to-hold-office-for-a-term-of-six
26 years-]

27 "(e) The Board shall be represented by the Attorney General

1 and the District and County Attorneys of the state.

2 " (f) A person who is required to register as a lobbyist under
3 Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973,
4 as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may
5 not serve as a member of the Board or act as the general counsel to
6 the Board.

7 " (g) A member or employee of the Board may not be an officer,
8 employee, or paid consultant of a statewide or national trade
9 association in the hearing aid industry. A member or employee of
10 the Board may not be related within the second degree by affinity
11 or within the second degree by consanguinity to a person who is an
12 officer, employee, or paid consultant of a statewide or national
13 trade association in the regulated industry.

14 " (h) It is a ground for removal from the Board if a member:

15 " (1) does not have at the time of appointment the
16 qualifications required by Subsection (a) of this section for
17 appointment to the Board;

18 " (2) does not maintain during the service on the Board the
19 qualifications required by Subsection (a) of this section for
20 appointment to the Board; or

21 " (3) violates a prohibition established by Subsection (f) or
22 (g) of this section.

23 " (i) The validity of an action of the Board is not affected
24 by the fact that it was taken when a ground for removal of a member
25 of the Board existed.

26 " (j) [~~(f)~~] The Texas Board of Examiners in the Fitting and
27 Dispensing of Hearing Aids is subject to the Texas Sunset Act

1 (Article 5429k, Vernon's Texas Civil Statutes); and unless
2 continued in existence as provided by that Act the board is
3 abolished, and this Act expires effective September 1, 1993 [1981].

4 "Sec^{HM} 3. BOARD ORGANIZATION AND MEETINGS. Within 60 days
5 after their appointment and qualification the initial Board shall
6 hold its first meeting and elect a President, Vice-President, and
7 Secretary-Treasurer. The term of office for all officers of the
8 Board shall be for a period of one year.

9 "The Board shall hold regular meetings at least twice a year
10 at which an examination of applicants for license shall be given.
11 [~~Not--less--than--30--days--notice--of--such--meeting--shall--be--given--by~~
12 ~~publication--in--at--least--three--daily--newspapers--of--general~~
13 ~~circulation--to--be--selected--by--the--Board--written--notice--of--such~~
14 ~~regular--meetings--of--the--Board--shall--be--given--to--the--members--by--the~~ ^{per 4/2/81}
15 ~~Secretary-Treasurer--of--the--Board--by--certified--mail--not--less--than--30~~
16 ~~days--prior--to--the--date--of--such--regular--meeting--]~~ Special meetings
17 of the Board shall be held upon [the-written] request of a majority
18 of the members or upon the call of the President. [Written--notice
19 of--such--special--meetings--of--the--Board--shall--be--given--to--members--by
20 the--Secretary-Treasurer--of--the--Board--by--certified--mail--not--less
21 than--30--days--prior--to--the--date--of--the--special--meetings--] A
22 majority of the Board shall constitute a quorum for the transaction
23 of business and should a quorum not be present on the day appointed
24 for any meeting, those present may adjourn from day to day until a
25 quorum be present provided such period shall not be longer than
26 three successive days."

27 "Sec^{HM} 6. EXAMINATION; APPLICATION. (a) Every person

1 desiring to engage in fitting and dispensing hearing aids in the
2 State of Texas shall be required to pass an examination given by
3 the Texas Board of Examiners in the Fitting and Dispensing of
4 Hearing Aids.

5 "(b) The applicant shall make application, furnishing to the
6 Secretary-Treasurer of the Board on forms to be furnished by the
7 Board, sworn evidence that he has attained the age of majority [18
8 years,---is--of--good--moral--character,---is--free--of--contagious-or
9 infectious-disease,] and has graduated from an accredited high
10 school or equivalent, and such other information as the Board may
11 deem necessary for the enforcement of this Act.

12 "(c) The examination shall consist of written, oral or
13 practical tests that shall be objective in method and applied in a
14 consistent manner. The examination shall cover the following areas
15 as they relate to the fitting and dispensing of hearing aids [in
16 the--following--areas-as-they-pertain-to-the-fitting-and-dispensing
17 of-hearing-aids,-to-wit]:

- 18 "(1) Basic physics of sound;
19 "(2) The structure and function of hearing aids;
20 "(3) Fitting of hearing aids;
21 "(4) Pure tone audiometry, including air conduction testing
22 and bone conduction testing;
23 "(5) Live voice and/or record voice speech audiometry; 7/8
24 "(6) Masking when indicated;
25 "(7) Recording and evaluation of audiograms and speech
26 audiometry to determine the hearing aid candidacy;
27 "(8) Selection and adaption of hearing aids and testing of

1 hearing aids; and

2 "(9) Taking of earmold impressions.

3 "(d) No part of the examination shall consist of tests
4 requiring knowledge of the diagnosis and/or treatment of any
5 disease or injury to the human body.

6 "(e) Each applicant shall be given due notice of the date and
7 place of the examination and the subjects, areas, and/or skills
8 that will be included within such examination, and there shall be
9 no changes in said subjects, areas, and/or skills after the date of
10 the examination has been announced and publicized [~~nor shall there~~
11 ~~be more than one change or group of changes in any one calendar~~
12 ~~year~~]. All examinations shall be conducted in writing and by such
13 other means as the Board shall determine adequate to ascertain the
14 qualifications of applicants. Upon reexamination, a person who has
15 previously failed shall be examined only on those portions of the
16 examination which he failed. [~~All applicants examined during a given~~
17 ~~calendar year shall be given the same examination.~~] Every
18 applicant successfully passing the examination and meeting all the
19 requirements of this Act shall be registered by the Board as
20 possessing the qualifications required by this Act and shall
21 receive from the Board a license to fit and dispense hearing aids
22 in this state.

23 "(f) The Board, in its discretion, may refuse to examine an
24 applicant if he has been convicted of a felony or a misdemeanor
25 that involved moral turpitude. ^{8/9}

26 "(g) Within 30 days after the day on which a licensing
27 examination is administered under this Act, the Board shall notify

1 each examinee of the results of the examination. However, if an
2 examination is graded or reviewed by a national testing service,
3 the Board shall notify examinees of the results of the examination
4 within two weeks after the day that the Board receives the results
5 from the testing service. If the notice of the examination results
6 will be delayed for longer than 90 days after the examination date,
7 the Board shall notify the examinee of the reason for the delay
8 before the 90th day. If requested in writing by a person who fails
9 the licensing examination administered under this Act, the Board
10 shall furnish the person with an analysis of the person's
11 performance on the examination. "

12 " ^{Section} 9. TEMPORARY TRAINING PERMIT. (a) The Board shall
13 grant a temporary training permit to fit and dispense hearing aids
14 to any person applying to the Board who has never taken the
15 examination provided in the Act and who possesses the
16 qualifications in Subsection (b) of Section 6, of this Act, upon
17 written application to the Secretary-Treasurer of the Board, the
18 applicant shall make application on forms to be furnished by the
19 Board furnishing sworn evidence that he possesses the
20 qualifications contained in Subsection (b), Section 6, of this Act,
21 that he has never taken the examination provided in this Act, and
22 that he has never previously been issued a temporary training
23 permit to fit and dispense hearing aids by the Board. 7/5

24 "(b) The application for a temporary permit shall be
25 accompanied by the affidavit of a person duly licensed and
26 qualified to fit and dispense hearing aids in this state. The
27 accompanying affidavit shall state that the applicant, if granted a

1 temporary training permit, will be supervised by the affiant in all
2 work done by applicant under such temporary training permit, that
3 affiant will notify the Board within 10 days following applicant's
4 terminating of supervision by affiant.

5 " (c) A temporary training permit shall authorize the holder
6 thereof, to fit and dispense hearing aids for a period of one year
7 or until the holder thereof shall have successfully passed the
8 examination required for a license under this Act, whichever occurs
9 first.

10 " (d) A temporary training permit shall automatically become
11 void at the end of the period of 6 months from the date of its
12 issuance unless extended for an additional period not to exceed 6
13 months by the Board. The Board shall never extend a temporary
14 training permit more than one time.

15 " (e) The Board shall establish educational guidelines, both
16 formal and practical, for the training of temporary permit holders.
17 The training guidelines shall include directions to the training
18 supervisor about subject matter to be taught, length of the
19 training period, extent of trainee contact with the public, and
20 responsibility of the training supervisor for direct supervision of
21 all aspects of the training period.

22 " ^{10/11} Sect¹⁰ 10. GROUND¹⁰S FOR DISCIPLINARY ACTIONS [REFUSAL--TO
23 LICENSE-AND-REVOCA¹⁰TION-OR--SUSPENSION--OF--LICENSE--GROUND¹⁰S]. The
24 Board shall revoke or suspend a permit or license, ^{place on probation} ~~probate~~ a person
25 whose permit or license has been suspended, or reprimand a
26 permittee or licensee for any of the following violations [The
27 Board--may,--in--its--discretion,--refuse-to-issue-a-license-to-any

1 applicant-and-may-cancel,-revoke-or-suspend-the--operation--of--any
2 license-by-it-granted,-for-any-of-the-following-reasons]:

3 " [1]--The---applicant---or---licensee---is--guilty--of--gross
4 immorality-

5 " [2]--The-applicant-or-licensee-is-unfit--or--incompetent--by
6 reason-of-negligence-]

7 " (1) [3] The temporary trainee [applicant] or licensee is
8 guilty of any fraud, deceit or misrepresentation in the fitting and
9 dispensing of hearing aids or in his seeking of a license under
10 this Act.

11 " (2) [4] The temporary trainee [applicant] or licensee is
12 [has-been] convicted of a felony or a misdemeanor which involves
13 [involved] moral turpitude.

14 " (3) The temporary trainee or licensee is unable to fit and
15 dispense hearing aids with reasonable skill and safety to customers
16 by reason of incompetence, age, illness, drunkenness, excessive use
17 of drugs, narcotics, chemicals; or any other type of material or as
18 a result of any condition causing the temporary trainee or licensee
19 to become mentally or physically incapable as determined by a court
20 of competent jurisdiction [5]--The--applicant--or--licensee--is--a
21 habitual--drunkard--or-is-addicted-to-the-use-of-morphine,-cocaine,
22 or-other-drugs-having-similar-effects-or-has-become-insane--or--has
23 been-adjudged-by-a-court-of-competent-jurisdiction-to-be-of-unsound
24 mind].

25 " (4) [6] The temporary trainee [applicant] or licensee has
26 violated any of the provisions of this Act or Board rules.

27 " (5) [7] The licensee has knowingly, directly or indirectly

1 employed, hired, procured, or induced a person not licensed to fit
2 and dispense hearing aids in this state, to so fit and dispense
3 hearing aids.

4 " (6) [(8)] The licensee aids or abets any person not duly
5 licensed under this Act in the fitting or dispensing of hearing
6 aids.

7 " (7) [(9)] The licensee lends, leases, rents, or in any other
8 manner places his license at the disposal or in the service of any
9 person not licensed to fit and dispense hearing aids in this state.

10 " (8) [(10)] The licensee knowingly used or caused or promoted
11 the use of any advertising matter, promotional literature,
12 guarantees, warranty, disseminated or published with misleading,
13 deceiving or false information. It is the intention of the
14 Legislature that the provisions of this subdivision [Subsection
15 (10)--and--the--following--Subsection--(11)] be interpreted insofar as
16 possible to coincide with the orders and rules of the Federal Trade
17 Commission on such subjects.

18 " [(11)--The--licensee--advertised--a--particular--model,--type--or
19 kind--of--hearing--aid--for--sale--when--purchasers--or--prospective
20 purchasers--responding--to--the--advertisement--cannot--purchase--or--are
21 dissuaded--from--purchasing--the--advertised--model,--type,--or--kind--when
22 it--is--established--that--the--purpose--of--the--advertisement--is--to
23 obtain--prospects--for--the--sale--of--a--different--model,--type--or--kind
24 than--was--advertised.]

25 " (9) [(12)] The licensee represented that the service or
26 advice of a person licensed to practice medicine by the Texas State
27 Board of Medical Examiners is used or made available in the

1 selection, fitting, adjustment, maintenance, or repair of a hearing
2 aid when such representation was not true.

3 "(10) [(13)] The licensee used the term 'doctor,' 'clinic' or
4 any like words, abbreviations or symbols in the conduct of his
5 business which would tend to connote that the licensee was a
6 physician or surgeon.

7 "(14)--The licensee defamed another licensee under this Act
8 by--falsely--imputing--to--him--dishonorable--conduct,--inability--to
9 perform--contracts,--questionable--credit--standing,--or--any--other--false
10 representation--or--falsely--disparaging--the--products--of--such--other
11 licensee--in--any--respect,--or--the--business--methods,--selling--prices,
12 values,--credit--terms,--policies,--or--services--of--such--other--licensee.

13 "(15)--The licensee displayed--competitive--products--in--his
14 place--of--business,--or--in--the--advertising--in--such--manner--as--to
15 falsely--disparage--them.

16 "(16)--The licensee quoted prices of competitive hearing aids
17 or devices without disclosing that the prices were not the present,
18 correct,--current--prices,--or--falsely--showed,--demonstrated--or
19 represented--competitive--hearing--aids--models--as--being--the--correct,
20 current--model--of--such--hearing--aids.

21 "(17)--The licensee--imitated--or--simulated--the--trademark,
22 tradename,--brand,--or--label--of--another--licensee--under--this--Act--with
23 the--intent--to--mislead--or--deceive--purchasers--or--prospective
24 purchasers.

25 "(18)--The--licensee--used--in--his--advertising--the--name,--model
26 name--or--trademark--of--a--particular--manufacturer--of--hearing--aids--with
27 the--intent--to--falsely--imply--a--relationship--with--such--manufacturer

1 ~~that-does-not-exist-~~]

2 " (11) [~~(19)~~] The licensee obtained or attempted to obtain
3 information concerning the business of another licensee under this
4 Act by bribery, or attempting to bribe an employee or agent of such
5 other licensee or by the impersonation of one in authority.

6 " (12) [~~(20)~~] The licensee directly or indirectly gave, or
7 offered to give or permitted or caused to be given money or
8 anything of value to any person who advises others in a
9 professional capacity as an inducement to influence such person to
10 influence those persons such person advises in a professional
11 capacity to purchase or contract to purchase products sold or
12 offered for sale by licensee or to refrain from purchasing or
13 contracting to purchase products sold or offered for sale by any
14 other licensee under this Act.

15 " (13) [~~(21)~~] The licensee falsely represented to a purchaser
16 that a hearing aid was 'custom-made,' 'made to order,'
17 'prescription-made' or any other representations that such hearing
18 aid was specially fabricated for the purchaser.

19 " (14) [~~(22)~~] The licensee refused to accept responsibility
20 for the acts of a temporary training permittee in a licensee's
21 employ and under licensee's supervision. ¹⁴ /

22 " (15) [~~(23)~~] The licensee with fraudulent intent, engaged in
23 the fitting and dispensing of hearing aids under a false name or
24 alias.

25 " [~~(24)~~ --The-licensee-had-failed--to--actively--engage--in--the
26 fitting--and--dispensing--of--hearing--aids--for--a-period-of-three
27 consecutive-years-]

1 " ^{10m}Sec 11. DISCIPLINARY ACTIONS [PROCEDURE]. (a) If the
2 Board proposes to refuse a person's application for examination, to
3 suspend or revoke a person's license, or to probate or reprimand a
4 person, the person is entitled to a hearing before the Board.

5 " (b) The proceedings are governed by the Administrative
6 Procedure and Texas Register Act, as amended (Article 6252-13a,
7 Vernon's Texas Civil Statutes).

8 " (c) [~~a~~] Proceedings [~~for-revocation--or--suspension--of--a~~
9 license] shall be commenced by filing charges with the Board in
10 writing and under oath. The charges may be made by any person or
11 persons.

12 " (d) [~~b~~] The president of the Board shall fix a time and
13 place for a hearing and shall cause a copy of the charges, together
14 with a notice of the time and place fixed for the hearing to be
15 served upon the applicant or licensee against whom charges have
16 been filed at least 30 days prior thereto. Service of such charges
17 and notice of hearing thereon may be given by certified mail to the
18 last known address of such licensee or applicant.

19 " (e) [~~e~~] At the hearing, such applicant or licensee shall
20 have the right to appear either personally or by counsel or both to
21 produce witnesses, and to have subpoenas issued by the Board and
22 cross-examine opposing or adverse witnesses.

23 " (f) [~~d~~] The Board shall not be bound by strict rules of
24 procedure or by the laws of evidence in the conduct of its
25 proceedings but the determination shall be founded upon sufficient
26 legal evidence to sustain it.

27 " (g) [~~e~~] The Board shall determine the charges upon their

1 merits. The Board shall enter an order in the permanent records of
2 the Board setting forth the findings of fact and law of the Board
3 and its action thereon. A copy of such order of the Board shall be
4 mailed to such applicant or licensee to his last known address by
5 certified mail.

6 " (h) [~~f~~] Any person whose license to fit and dispense
7 hearing aids has been refused or has been cancelled, revoked or
8 suspended by the Board, may, within 20 days after making and
9 entering of such order, take an appeal to any district court of
10 Travis County or any district court of the county of his residence.

11 " (i) [~~g~~]--A--case--reviewed--under--the--provisions--of--this
12 section--proceeds--in--such--district--court--by--trial--de--novo--as--that
13 term--is--used--and--understood--in--appeals--from--justice--of--the--peace
14 courts--to--the--county--courts--of--this--state.] Appeal from the
15 judgment of such district court will lie as other civil cases.

16 " (j) [~~h~~] Upon application, the Board may reissue a license
17 to fit and dispense hearing aids to a person whose license has been
18 cancelled or revoked but such application shall not be made prior
19 to the expiration of a period of six months after the order of
20 cancellation or revocation has become final, and such application
21 shall be made in such manner and form as the Board may require.

22 " Sec¹¹⁰ 12. FEES AND EXPENSES. (a) The Board shall establish reasonable
23 fee--of--\$25.00--for--issuing--a--temporary--training--permit,--which--fee
24 must--accompany--the--application--for--a--temporary--training--permit].

25 (b) (b) The Board shall charge a fee of \$35.00 for examining an
26 applicant for a license, which fee must accompany the application.

27 (c) The Board shall charge a fee of \$50.00 for issuing a

and necessary fees
for the administration
of this Act

1 license-

2 ~~" [(1) --Any person making application for a license without an~~
3 ~~examination as provided in Sections 7 and 8 must submit such fee~~
4 ~~with such application.]~~

5 (a) The Board shall establish reasonable and necessary fees
6 for the administration of this Act.

7 ~~" (b) [(2)]~~ Every person passing the examination and meeting
8 the requirements of the Board shall be notified that he is eligible
9 for such license upon payment of the fee herein provided. Such
10 notice shall be by certified mail at the address given on his
11 examination papers. The fee for issuance of such license must be
12 paid by the applicant within 90 days after having been notified.
13 Failure to pay such fee within such time shall constitute a waiver
14 of the right to such person to obtain his license.

15 ~~" [(d) --The Board shall charge a fee of \$5.00 for each~~
16 ~~duplicate license or duplicate temporary training permit.]~~

17 ~~" (c) [(e)]~~ The Secretary-Treasurer of the Board shall, on or
18 before the 10th day of each month, remit to the State Treasurer all
19 of the fees collected by the Board during the preceding month for
20 deposit in the General Revenue Fund. ^{17/8}

21 " (d) Each member of the Board is entitled to a per diem as
22 set by legislative appropriation for each day that the member
23 engages in the business of the Board. ~~[(f) --Each member of the~~
24 ~~Board is entitled to a per diem of \$30 for each day he is engaged~~
25 ~~in performing the duties of his office.]~~ The travel expenses
26 allowance for members of the Board and its employees shall be
27 provided in the General Appropriations Act. The executive director

1 of the Board shall be allowed his actual expenses incurred while
2 traveling on official business for the Board.

3 " (e) [(g)] The number of days for which compensation may be
4 paid to members of the Board shall not exceed two days in any
5 calendar month except in those months in which examinations are
6 held, but compensations may never be allowed to exceed six days in
7 those months in which examinations are held.

8 " (f) [(h)] The Board may authorize all necessary
9 disbursements to carry out the provisions of this Act, including
10 payment of the premium on the bond of the Secretary-Treasurer,
11 stationery expenses, purchase and maintain or rent equipment and
12 facilities necessary to carry out the examinations of applications
13 for license; pay for printing of all licenses; rent and furnish an
14 office to maintain the permanent records of the Board.

15 " (g) [(i)] Funds for the administration of this Act shall be
16 provided by the General Appropriations Act from the General Revenue
17 Fund.

18 " [(j)]--The balance of all money remaining in the ^{15 7/2/81} "Fitting--and
19 Dispensing--of--Hearing--Aids--Fund" account on August 31, 1979, is
20 transferred to the General Revenue Fund.] ^{18/79}

21 " ¹⁰Sec 13. RENEWAL OF LICENSE. (a) Each license to fit and
22 dispense hearing aids shall be issued for the term of one year and
23 shall, unless suspended or revoked, be renewed annually on
24 September 1 upon payment of the renewal fee.

25 " (b) A person may renew an unexpired license by paying to the
26 Board before the expiration date of the license the required
27 renewal fee.

1 " (c) If a person's license has been expired for not longer
2 than 90 days, the person may renew the license by paying to the
3 Board the required renewal fee and a fee that is one-half of the
4 examination fee for the license.

5 " (d) If a person's license has been expired for longer than
6 90 days but less than two years, the person may renew the license
7 by paying to the Board all unpaid renewal fees and a fee that is
8 equal to the examination fee for the license.

9 " (e) If a person's license has been expired for two years or
10 longer, the person may not renew the license. The person may
11 obtain a new license by submitting to reexamination and complying
12 with the requirements and procedures for obtaining an original
13 license.

14 " (f) Before a license can be renewed, the Board shall require
15 certification that all testing equipment, both portable and
16 stationary, used by the licensee has been calibrated within one
17 year prior to the renewal date. [On-or-before--the--first--day--of

18 January,--1972,--every--licensee--under--this--Act--shall--pay--to--the
19 Secretary-Treasurer-of-the-Board-an-annual-renewal--fee--of--\$67.50
20 for-the-renewal-of-his-license-to-fit-and-dispense-hearing-aids-for
21 the--year--1972.---On-or-before-the-first-day-of-January,1973,-and
22 every-year-thereafter,--every--licensee-under-this-Act--shall--pay--to
23 the--Secretary-Treasurer--of--the--Board--an--annual-renewal-fee-of
24 \$125.00-for-renewal-of-his-license-to-fit-and-dispense-hearing-aids
25 for-the-current-year.---On-receipt-of-said-renewal--fee,--the--Board
26 shall-issue-an-annual-renewal-certificate-bearing-the-number-of-his
27 license,--the--year--for--which--it--is--renewed,--and--such--other

1 information from the records of the Board as the Board may deem
2 necessary for the proper enforcement of this Act.

3 " (b) When a licensee shall fail to pay his annual renewal
4 fee by February 1st of each year, it shall be the duty of the Board
5 to notify such licensee by certified mail at his last known address
6 that said annual renewal fee is due and unpaid, if the annual
7 renewal fee is not paid within 60 days from the said date of
8 mailing such notice, the Board shall then cancel said license.]

9 " (g) (e) Fitting and dispensing hearing aids without an
10 annual renewal certificate for the current year as provided herein
11 shall have the same force and effect and be subject to the same
12 penalties as fitting and dispensing hearing aids without a license.

13 " (d) After the Board shall have cancelled a license for
14 nonpayment of the annual renewal fee, the Board may refuse to issue
15 a new license until such fitter and dispenser of hearing aids has
16 paid all previous unpaid annual fees.]

17 " (h) (e) The Board shall issue a duplicate license to any
18 licensee whose license has been lost or destroyed and the Board
19 shall have the authority to prescribe the procedure and
20 requirements for the issuance of the duplicate license. "

21 " Sect^{hon} 19. EXCEPTIONS. Nothing in this Act shall be construed
22 to apply to the following:

23 " (1) Persons engaged in the practice of measuring human
24 hearing as a part of the academic curriculum of an accredited
25 institution of higher learning, provided such persons or their
26 employees do not sell hearing aids.

27 " (2) [Persons engaged in the practice of measuring human

1 hearing--as--a--part--of--a--program--conducted--by---a---nonprofit
2 organization,--provided-such-organization-or-its-employees-does-not
3 sell-hearing-aids-

4 " [43] Physicians and surgeons duly licensed by the Texas
5 State Board of Medical Examiners and qualified to practice in the
6 State of Texas.

7 "[44]--Persons-employed-and-directly-supervised-by-a-physician
8 and-surgeon-to-test-or-measure-human-hearing,-provided-such-persons
9 do-not-sell-hearing-aids-]"

10 "(3) An individual with a master's or doctorate degree in
11 audiology from an accredited college or university may engage in
12 the measurement of human hearing by the use of an audiometer or
13 by any means for the purpose of making selections and adaptations
14 of or recommendations for a hearing aid, provided such persons
15 do not sell hearing aids.

16 SECTION 2. Chapter 366, Acts of the 61st Legislature,
17 Regular Session, 1969, as amended (Article 4566-1.01 et seq.,
18 Vernon's Texas Civil Statutes), is amended by adding Sections 12A
19 and 12B to read as follows:

20 "Section 12A. ADVERTISEMENTS. The Board may not adopt rules
21 restricting competitive bidding or advertising by a person
22 regulated by the Board except to prohibit false, misleading, or
23 deceptive practices by the person. The Board may not include in
24 its rules to prohibit false, misleading, or deceptive practices by
25 a person regulated by the Board a rule that:

26 "(a) restricts the person's use of any medium for
27 advertising;

"(b) restricts the person's personal appearance or use of his

1 personal voice in an advertisement;

2 " (c) relates to the size or duration of an advertisement by
3 the person; or

4 " (d) restricts the person's advertisement under a trade name.

5 " Sec¹⁰ 12B. CONSUMER INFORMATION AND COMPLAINTS. (a) The
6 Board shall prepare information of consumer interest describing the
7 regulatory functions of the Board and describing the Board's
8 procedures by which consumer complaints are filed with and resolved
9 by the Board. The Board shall make information available to the
10 general public and appropriate state agencies.

11 " (b) Each written contract for services in this state of a
12 licensed hearing aid fitter and dispenser shall contain the name,
13 mailing address, and telephone number of the Board. There shall at
14 all times be prominently displayed in the place of business of each
15 licensee regulated under this Act⁶ a sign containing the name,
16 mailing address, and telephone number of the Board and a statement
17 informing consumers that complaints against licensees can be
18 directed to the Board.

19
20
21 " (c) The Board shall establish guidelines for a 30-day trial
22 period on every hearing aid purchased from a licensed hearing aid
23 fitter and dispenser.

24 " (d) The Board shall keep an information file about each
25 complaint filed with the Board relating to a licensee. If a
26 written complaint is filed with the Board relating to a licensee,
27 the Board, at least as frequently as quarterly and until final

1 disposition of the complaint, shall notify the parties to the
2 complaint of the status of the complaint unless the notice would
3 jeopardize an undercover investigation."

4 SECTION 3. A rule adopted by the Texas Board of Examiners in
5 the Fitting and Dispensing of Hearing Aids before September 1,
6 1981, that conflicts with Chapter 366, Acts of the 61st
7 Legislature, Regular Session, 1969 (Article 4566-1.01 et seq.,
8 Vernon's Texas Civil Statutes), as amended by this Act, is void.
9 Within 90 days after September 1, 1981, the board shall repeal the
10 rule.

11 SECTION 4. A person holding office as a member of the Texas
12 Board of Examiners in the Fitting and Dispensing of Hearing Aids on
13 the effective date of this Act continues to hold the office for the
14 term for which the member was originally appointed.

15 SECTION 5. Sections 7 and 20, Chapter 366, Acts of the 61st
16 Legislature, Regular Session, 1969 (Article 4566-1.01 et seq.,
17 Vernon's Texas Civil Statutes), are repealed.

18 *Insert am. #1*
19 SECTION 6. Section 3, Chapter 796, Acts of the 62^d
20 Legislature, Regular Session, 1971 (Article 4566-1.15(a)(7), *Vernon's Texas Civil Statutes*),
is repealed.

21 SECTION 7. Section 14, Chapter 366, Acts of the 61st
22 Legislature, Regular Session, 1969, as amended (Article 4566-
23 1.14 is amended by adding ~~a new~~ subsection (e) *to read as follows:*
Vernon's Texas Civil Statutes),

1 "(e) Any individual licensed under the provisions of this
2 Act shall seek personally or through proper referral channels
3 to obtain the following minimal information on each prospective
4 candidate for amplification:

5 " (1) pertinent case history;

6 " (2) otoscopic inspection of the outer ear, including
7 canal and drumhead;

8 " (3) evaluation of hearing acuity utilizing puretone
9 techniques via air and bone conduction pathways through a
10 calibrated system; and

11 " (4) an aided and unaided speech reception threshold and
12 ability to differentiate between the phonemic elements of the
13 language through speech audiometry, utilizing a calibrated
14 system."

15 SECTION 8. This Act takes effect September 1, 1981.

16 SECTION 9. The importance of this legislation and the
17 crowded condition of the calendars in both houses create an
18 emergency and an imperative public necessity that the
19 constitutional rule requiring bills to be read on three several
20 days in each house be suspended, and this rule is hereby suspended.

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LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 1, 1981

Honorable Chet Brooks, Chairman
Committee on Human Resources
Senate Chamber
Austin, Texas

In Re: Senate Bill No. 604
By: Doggett

Sir:

In response to your request pursuant to Senate Rule 94, Subsection (g), this office finds the fiscal implications of Senate Bill No. 604 (relating to continuation of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids and regulation of the fitters and dispensers of hearing aid devices) to be as follows:

The bill would make no appropriation but could provide the legal basis for a request for funds to implement the provisions of the bill.

The State Board of Examiners in the Fitting and Dispensing of Hearing Aids is subject to the provisions of the Texas Sunset Act, and unless continued in existence by the Legislature, will be abolished effective September 1, 1981.

The bill, should it be enacted, would continue the existence of the Board of Examiners in the Fitting and Dispensing of Hearing Aids, require the development of guidelines for temporary trainees and require the dissemination of information to the public.

The amount set forth for this agency in the General Appropriations Bill, as introduced (FY 1982 \$48,437, FY 1983 \$51,189), would be contingent, if approved, upon passage of SB 604 or similar legislation. These appropriations would be financed from the General Revenue Fund No. 1, and would provide for approximately 1.5 state employees.


In addition to the recommended appropriations, the probable fiscal implication of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost Out of the General Revenue Fund	
1982	\$	1,000
1983		1,000
1984		1,000
1985		1,000
1986		1,000

It should be noted that this agency collects fees which are deposited to the General Revenue Fund. The bill would give the board members of the agency the authority to adjust the agency fees so that the total fees collected would be sufficient to meet the level of appropriation set by the Legislature. In order for fee revenues to meet recommended appropriations plus the cost of this bill, it is estimated that increased fee revenues of approximately \$3,000 per year would need to be generated.

The financial implications of the bill in future years may reasonable be expected to approximate the recommended appropriation level, plus the additional recommendations of the Sunset Advisory Commission, for fiscal years 1982 and 1983, but would in fact depend upon future decisions of the Texas Legislature.

No fiscal implication or additional cost to units of local government attributable to the bill, should it be enacted, is anticipated.



Thomas M. Keel
Director

Source: Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids;
LBB Staff: TK, JH, KS, PA

floor
Amendment to C. S. S. B. 604
1

Write

SK

Amend Section 6, committee substitute for Senate Bill 604 by striking "Section 3, Chapter 796, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4566-1.15(a)(7)) is repealed." and substituting therefor the following:

4 SECTION 6. Subdivision 7, Subsection (a), Section ~~3~~⁵, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as amended by Section 3, Chapter 796, Acts of the 62nd Legislature, ⁷³Regular Session, 1971 (Article 4566-1.15(a)(7)), is repealed.

Common's Texas Civil Statutes

ADOPTED

APR 6 1981

Betty King
Secretary of the Senate

v am. # *1*

Amend the caption to conform to the
body of the bill

ADOPTED

APR 6 1981

Betty King
Secretary of the Senate

April 6 1981 Engrossed
Daisy Law
Engrossing Clerk

I certify that the attached is a true and correct
copy of SB 604, which was
received from the Senate on APR 7 1981, and
referred to the Committee on Government Organizations
Daisy Law
Chief Clerk of the House

By: Doggett

S.B. No. 604

A BILL TO BE ENTITLED

AN ACT

relating to continuation of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids and regulation of the fitters and dispensers of hearing aid devices; amending Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), by amending Sections 1, 2, 3, 6, 9, 10, 11, 12, 13, and 19; adding Sections 12A and 12B and Subsection (e) to Section 14; and repealing Subdivision (7), Subsection (a), Section 15 and Sections 7 and 20.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 1, 2, 3, 6, 9, 10, 11, 12, 13, and 19, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), are amended to read as follows:

"Section 1. DEFINITIONS. In this Act, unless the context requires a different definition:

"(a) 'Board' means the Texas Board of Examiners, in the Fitting and Dispensing of Hearing Aids.

"(b) 'License' means license issued by the Board under this Act to a person authorized to fit and dispense hearing aids.

"(c) 'Temporary Training Permit' means a permit issued by the Board to persons authorized to fit and dispense hearing aids only under the supervision of a person who holds a license under this Act.

"(d) 'Hearing aid' means any instrument or device designed

1 for, or represented as, aiding, improving or correcting defective
2 human hearing, but as used herein shall not mean repair services,
3 replacements for defective parts and shall not include batteries,
4 cords and accessories.

5 "(e) 'Sell' or 'sale' includes a transfer of title or of the
6 right to use by lease, bailment, or any other contract. Provided,
7 for the purpose of this Act, the term 'sell' or 'sale' shall not
8 include sales at wholesale by manufacturers to persons licensed
9 under this Act, or to distributors for distribution and sale to
10 persons licensed under this Act.

11 "(f) 'Fitting and Dispensing hearing aids' means the
12 measurement of human hearing by the use of an audiometer or by any
13 means for the purpose of making selections, adaptations and/or
14 sales of hearing aids. The term also includes the sale of hearing
15 aids, and the making of impressions for earmolds to be used as a
16 part of the hearing aid.

17 "(g) '30-day trial period' means the period in which a
18 person may cancel the purchase of a hearing aid.

19 "Section 2. BOARD OF EXAMINERS. (a) The Texas Board of
20 Examiners in the Fitting and Dispensing of Hearing Aids is hereby
21 created. The Board shall be composed of nine members with the
22 following qualifications, to-wit:

23 "(1) Six of such members shall possess the necessary
24 qualifications to fit and dispense hearing aids in this state and
25 have been residents of this state actually engaged in fitting and
26 dispensing hearing aids for at least five years immediately
27 preceding their appointment. No more than two of such six members

shall be employed by, franchised by, or associated exclusively with the same hearing aid manufacturer;

"(2) One board member must be a member of the general public. A person is eligible for appointment as a public member if the person and the person's spouse: are not licensed by an occupational regulatory agency in the field of health care; are not employed by and do not participate in the management of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; and do not own, control, or have, directly or indirectly, an interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment [One-of-such--members shall--be--a--citizen--of--the-United-States-and-a-resident-of-this state-for-a-period-of-at-least-two-years-immediately-preceding--his appointment--and-such-member-shall-not-have-a-financial-interest-in a-hearing-aid-manufacturing-company--or--a--wholesale--hearing--aid company];

"(3) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment, shall be an active practicing physician or surgeon duly licensed to practice in this state by the Texas State Board of Medical Examiners, and specialize in the practice of otolaryngology. Such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale or retail hearing aid company; and

"(4) One of such members shall be a citizen of the United

1 , States and a resident of this state for a period of at least two
2 years immediately preceding his appointment and shall be an active
3 practicing audiologist. Such member shall not have a financial
4 interest in a hearing aid manufacturing company or a wholesale or
5 retail hearing aid company.

6 . "(b) One who has served two full consecutive terms on the
7 Board shall not be eligible for a reappointment to the Board for a
8 period of 12 months immediately following the expiration of the
9 second full term.

10 "(c) In the event of death, resignation or removal of any
11 members, the vacancy of the unexpired terms shall be filled by the
12 Governor in the same manner as other appointments. Each appointee
13 to the Board shall, within 15 days from the date of his
14 appointment, qualify by taking the constitutional oath of office.
15 Upon presentation of such oath, the Secretary of State shall issue
16 commissions to appointees as evidence of their authority to act as
17 members of the Board.

18 "(d) Members hold office for staggered terms of six years,
19 and each member shall continue until a successor is appointed and
20 qualifies. [~~The members of the initial Board, to be appointed by~~
21 ~~the Governor to take office on the effective date of this Act,~~
22 ~~shall be divided into three classes, to wit: Class One, Class Two,~~
23 ~~and Class Three, and their terms of office shall be determined by~~
24 ~~lot at the first meeting of the Board. The three Class One members~~
25 ~~shall hold office for two years, and the three Class Two members~~
26 ~~shall hold office for four years, and the three Class Three members~~
27 ~~shall hold office for six years respectively, from the time of~~

1 ~~their--appointment---Biennially--thereafter,--the--Governor--shall~~
2 ~~appoint-three-members-of-the-Board-to-hold-office-for-a-term-of-six~~
3 ~~years-]~~

4 "(e) The Board shall be represented by the Attorney General
5 and the District and County Attorneys of the state.

6 "(f) A person who is required to register as a lobbyist
7 under Chapter 422, Acts of the 63rd Legislature, Regular Session,
8 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes),
9 may not serve as a member of the Board or act as the general
10 counsel to the Board.

11 "(g) A member or employee of the Board may not be an
12 officer, employee, or paid consultant of a statewide or national
13 trade association in the hearing aid industry. A member or
14 employee of the Board may not be related within the second degree
15 by affinity or within the second degree by consanguinity to a
16 person who is an officer, employee, or paid consultant of a
17 statewide or national trade association in the regulated industry.

18 "(h) It is a ground for removal from the Board if a member:

19 "(1) does not have at the time of appointment the
20 qualifications required by Subsection (a) of this section for
21 appointment to the Board;

22 "(2) does not maintain during the service on the Board the
23 qualifications required by Subsection (a) of this section for
24 appointment to the Board; or

25 "(3) violates a prohibition established by Subsection (f) or
26 (g) of this section.

27 "(i) The validity of an action of the Board is not affected

1 by the fact that it was taken when a ground for removal of a member
2 of the Board existed.

3 "(j) [~~f~~] The Texas Board of Examiners in the Fitting and
4 Dispensing of Hearing Aids is subject to the Texas Sunset Act
5 (Article 5429k, Vernon's Texas Civil Statutes); and unless
6 continued in existence as provided by that Act the board is
7 abolished, and this Act expires effective September 1, 1993 [~~1981~~].

8 "Section 3. BOARD ORGANIZATION AND MEETINGS. Within 60 days
9 after their appointment and qualification the initial Board shall
10 hold its first meeting and elect a President, Vice-President, and
11 Secretary-Treasurer. The term of office for all officers of the
12 Board shall be for a period of one year.

13 "The Board shall hold regular meetings at least twice a year
14 at which an examination of applicants for license shall be given.
15 [~~Not--less--than--30--days--notice--of--such--meeting--shall--be--given--by~~
16 ~~publication--in--at--least--three--daily--newspapers---of---general~~
17 ~~circulation--to--be--selected--by--the--Board--Written--notice--of--such~~
18 ~~regular--meetings--of--the--Board--shall--be--given--to--the--members--by--the~~
19 ~~Secretary-Treasurer--of--the--Board--by--certified--mail--not--less--than--30~~
20 ~~days--prior--to--the--date--of--such--regular--meeting--]~~ Special meetings
21 of the Board shall be held upon [~~the-written~~] request of a majority
22 of the members or upon the call of the President. [~~Written--notice~~
23 ~~of--such--special--meetings--of--the--Board--shall--be--given--to--members--by~~
24 ~~the--Secretary-Treasurer--of--the--Board--by--certified--mail--not--less~~
25 ~~than--30--days--prior--to--the--date--of--the--special--meetings--]~~ A
26 majority of the Board shall constitute a quorum for the transaction
27 of business and should a quorum not be present on the day appointed

for any meeting, those present may adjourn from day to day until a quorum be present provided such period shall not be longer than three successive days."

"Section 6. EXAMINATION; APPLICATION. (a) Every person desiring to engage in fitting and dispensing hearing aids in the State of Texas shall be required to pass an examination given by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.

"(b) The applicant shall make application, furnishing to the Secretary-Treasurer of the Board on forms to be furnished by the Board, sworn evidence that he has attained the age of majority [~~18 years, is of good moral character, is free of contagious or infectious disease,~~] and has graduated from an accredited high school or equivalent, and such other information as the Board may deem necessary for the enforcement of this Act.

"(c) The examination shall consist of written, oral or practical tests that shall be objective in method and applied in a consistent manner. The examination shall cover the following areas as they relate to the fitting and dispensing of hearing aids [~~in the following areas as they pertain to the fitting and dispensing of hearing aids, to-wit~~]:

"(1) Basic physics of sound;

"(2) The structure and function of hearing aids;

"(3) Fitting of hearing aids;

"(4) Pure tone audiometry, including air conduction testing and bone conduction testing;

"(5) Live voice and/or record voice speech audiometry;

1 "(6) Masking when indicated;

2 "(7) Recording and evaluation of audiograms and speech
3 audiometry to determine the hearing aid candidacy;

4 "(8) Selection and adaption of hearing aids and testing of
5 hearing aids; and

6 "(9) Taking of earmold impressions.

7 "(d) No part of the examination shall consist of tests
8 requiring knowledge of the diagnosis and/or treatment of any
9 disease or injury to the human body.

10 "(e) Each applicant shall be given due notice of the date
11 and place of the examination and the subjects, areas, and/or skills
12 that will be included within such examination, and there shall be
13 no changes in said subjects, areas, and/or skills after the date of
14 the examination has been announced and publicized [~~nor shall--there~~
15 ~~be--more--than--one--change--or--group--of--changes--in--any--one--calendar~~
16 ~~year~~]. All examinations shall be conducted in writing and by such
17 other means as the Board shall determine adequate to ascertain the
18 qualifications of applicants. Upon reexamination, a person who has
19 previously failed shall be examined only on those portions of the
20 examination which he failed. [~~All--applicants--examined--during--a~~
21 ~~given--calendar--year--shall--be--given--the--same--examination--~~] Every
22 applicant successfully passing the examination and meeting all the
23 requirements of this Act shall be registered by the Board as
24 possessing the qualifications required by this Act and shall
25 receive from the Board a license to fit and dispense hearing aids
26 in this state.

27 "(f) The Board, in its discretion, may refuse to examine an

1 applicant if he has been convicted of a felony or a misdemeanor
2 that involved moral turpitude.

3 "(g) Within 30 days after the day on which a licensing
4 examination is administered under this Act, the Board shall notify
5 each examinee of the results of the examination. However, if an
6 examination is graded or reviewed by a national testing service,
7 the Board shall notify examinees of the results of the examination
8 within two weeks after the day that the Board receives the results
9 from the testing service. If the notice of the examination results
10 will be delayed for longer than 90 days after the examination date,
11 the Board shall notify the examinee of the reason for the delay
12 before the 90th day. If requested in writing by a person who fails
13 the licensing examination administered under this Act, the Board
14 shall furnish the person with an analysis of the person's
15 performance on the examination."

16 "Section 9. TEMPORARY TRAINING PERMIT. (a) The Board shall
17 grant a temporary training permit to fit and dispense hearing aids
18 to any person applying to the Board who has never taken the
19 examination provided in the Act and who possesses the
20 qualifications in Subsection (b) of Section 6, of this Act, upon
21 written application to the Secretary-Treasurer of the Board, the
22 applicant shall make application on forms to be furnished by the
23 Board furnishing sworn evidence that he possesses the
24 qualifications contained in Subsection (b), Section 6, of this Act,
25 that he has never taken the examination provided in this Act, and
26 that he has never previously been issued a temporary training
27 permit to fit and dispense hearing aids by the Board.

"(b) The application for a temporary permit shall be accompanied by the affidavit of a person duly licensed and qualified to fit and dispense hearing aids in this state. The accompanying affidavit shall state that the applicant, if granted a temporary training permit, will be supervised by the affiant in all work done by applicant under such temporary training permit, that affiant will notify the Board within 10 days following applicant's terminating of supervision by affiant.

"(c) A temporary training permit shall authorize the holder thereof, to fit and dispense hearing aids for a period of one year or until the holder thereof shall have successfully passed the examination required for a license under this Act, whichever occurs first.

"(d) A temporary training permit shall automatically become void at the end of the period of 6 months from the date of its issuance unless extended for an additional period not to exceed 6 months by the Board. The Board shall never extend a temporary training permit more than one time.

"(e) The Board shall establish educational guidelines, both formal and practical, for the training of temporary permit holders. The training guidelines shall include directions to the training supervisor about subject matter to be taught, length of the training period, extent of trainee contact with the public, and responsibility of the training supervisor for direct supervision of all aspects of the training period.

"Section 10. GROUND FOR DISCIPLINARY ACTIONS [REFUSAL-TO LICENSE-AND-REVOCATION-OR--SUSPENSION--OF--LICENSE--GROUNDS]. The

Board shall revoke or suspend a permit or license, place on probation a person whose permit or license has been suspended, or reprimand a permittee or licensee for any of the following violations [The Board may, in its discretion, refuse to issue a license to any applicant and may cancel, revoke or suspend the operation of any license by it granted, for any of the following reasons]:

"[~~(1)~~ The applicant or licensee is guilty of gross immorality.

"[~~(2)~~ The applicant or licensee is unfit or incompetent by reason of negligence.]

"(1) [(3)] The temporary trainee [applicant] or licensee is guilty of any fraud, deceit or misrepresentation in the fitting and dispensing of hearing aids or in his seeking of a license under this Act.

"(2) [(4)] The temporary trainee [applicant] or licensee is [has been] convicted of a felony or a misdemeanor which involves [involved] moral turpitude.

"(3) The temporary trainee or licensee is unable to fit and dispense hearing aids with reasonable skill and safety to customers by reason of incompetence, age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any condition causing the temporary trainee or licensee to become mentally or physically incapable as determined by a court of competent jurisdiction [~~(5)~~ The applicant or licensee is a habitual drunkard or is addicted to the use of morphine, cocaine, or other drugs having similar effects or has become insane or has

1 been-adjudged-by-a-court-of-competent-jurisdiction-to-be-of-unsound
2 mind].

3 "(4) [(6)] The temporary trainee [applicant] or licensee
4 has violated any of the provisions of this Act or Board rules.

5 "(5) [(7)] The licensee has knowingly, directly or
6 indirectly employed, hired, procured, or induced a person not
7 licensed to fit and dispense hearing aids in this state, to so fit
8 and dispense hearing aids.

9 "(6) [(8)] The licensee aids or abets any person not duly
10 licensed under this Act in the fitting or dispensing of hearing
11 aids.

12 "(7) [(9)] The licensee lends, leases, rents, or in any
13 other manner places his license at the disposal or in the service
14 of any person not licensed to fit and dispense hearing aids in this
15 state.

16 "(8) [(10)] The licensee knowingly used or caused or
17 promoted the use of any advertising matter, promotional literature,
18 guarantees, warranty, disseminated or published with misleading,
19 deceiving or false information. It is the intention of the
20 Legislature that the provisions of this subdivision [Subsection
21 (10)--and--the-following-Subsection-(11)] be interpreted insofar as
22 possible to coincide with the orders and rules of the Federal Trade
23 Commission on such subjects.

24 "[(11)--The-licensee-advertised-a-particular-model--type--or
25 kind--of--hearing--aid--for--sale--when--purchasers--or--prospective
26 purchasers--responding--to--the--advertisement--cannot--purchase--or--are
27 dissuaded--from--purchasing--the--advertised-model--type--or--kind--when

1 it-is-established-that-the--purpose--of--the--advertisement--is--to
2 obtain--prospects--for--the-sale-of-a-different-model,-type-or-kind
3 than-was-advertised.]

4 "(9) [(12)] The licensee represented that the service or
5 advice of a person licensed to practice medicine by the Texas State
6 Board of Medical Examiners is used or made available in the
7 selection, fitting, adjustment, maintenance, or repair of a hearing
8 aid when such representation was not true.

9 "(10) [(13)] The licensee used the term 'doctor,' 'clinic'
10 or any like words, abbreviations or symbols in the conduct of his
11 business which would tend to connote that the licensee was a
12 physician or surgeon.

13 "[(14)--The--licensee-defamed-another-licensee-under-this-Aet
14 by-falsely-imputing--to--him--dishonorable--conduct,-inability--to
15 perform-contracts,-questionable-credit-standing,-or-any-other-false
16 representation--or--falsely--disparaging-the-products-of-such-other
17 licensee-in-any-respect,-or-the-business-methods,-selling--prices,
18 values,-credit-terms,-policies,-or-services-of-such-other-licensee-

19 "[(15)--The--licensee--displayed--competitive-products-in-his
20 place-of-business,-or-in-the--advertising--in--such--manner--as--to
21 falsely-disparage-them-

22 "[(16)--The--licensee--quoted--prices--of-competitive-hearing
23 aids-or-devices-without-disclosing-that-the--prices--were--not--the
24 present,-correct,-current-prices,-or-falsely-showed,-demonstrated
25 or--represented--competitive--hearing--aids--models--as--being--the
26 correct,-current-model-of-such-hearing-aids-

27 "[(17)--The--licensee--imitated--or--simulated-the-trademark,

tradename, brand, or label of another licensee under this Act with the intent to mislead or deceive purchasers or prospective purchasers.

"[~~(18)~~] The licensee used in his advertising the name, model name or trademark of a particular manufacturer of hearing aids with the intent to falsely imply a relationship with such manufacturer that does not exist."

"(11) [~~(19)~~] The licensee obtained or attempted to obtain information concerning the business of another licensee under this Act by bribery, or attempting to bribe an employee or agent of such other licensee or by the impersonation of one in authority.

"(12) [~~(20)~~] The licensee directly or indirectly gave, or offered to give or permitted or caused to be given money or anything of value to any person who advises others in a professional capacity as an inducement to influence such person to influence those persons such person advises in a professional capacity to purchase or contract to purchase products sold or offered for sale by licensee or to refrain from purchasing or contracting to purchase products sold or offered for sale by any other licensee under this Act.

"(13) [~~(21)~~] The licensee falsely represented to a purchaser that a hearing aid was 'custom-made,' 'made to order,' 'prescription-made' or any other representations that such hearing aid was specially fabricated for the purchaser.

"(14) [~~(22)~~] The licensee refused to accept responsibility for the acts of a temporary training permittee in a licensee's employ and under licensee's supervision.

1 "(15) [~~23~~] The licensee with fraudulent intent, engaged in
2 the fitting and dispensing of hearing aids under a false name or
3 alias.

4 "~~[(24)---The---licensee---had---failed---to---actively---engage---in---the~~
5 ~~fitting-and-dispensing-of--hearing--aids--for--a--period--of--three~~
6 ~~consecutive-years.]~~

7 "Section 11. DISCIPLINARY ACTIONS [PROCEDURE]. (a) If the
8 Board proposes to refuse a person's application for examination, to
9 suspend or revoke a person's license, or to probate or reprimand a
10 person, the person is entitled to a hearing before the Board.

11 "(b) The proceedings are governed by the Administrative
12 Procedure and Texas Register Act, as amended (Article 6252-13a,
13 Vernon's Texas Civil Statutes).

14 "(c) [~~a~~] Proceedings [~~for--revocation-or-suspension-of-a~~
15 ~~license]~~ shall be commenced by filing charges with the Board in
16 writing and under oath. The charges may be made by any person or
17 persons.

18 "(d) [~~b~~] The president of the Board shall fix a time and
19 place for a hearing and shall cause a copy of the charges, together
20 with a notice of the time and place fixed for the hearing to be
21 served upon the applicant or licensee against whom charges have
22 been filed at least 30 days prior thereto. Service of such charges
23 and notice of hearing thereon may be given by certified mail to the
24 last known address of such licensee or applicant.

25 "(e) [~~e~~] At the hearing, such applicant or licensee shall
26 have the right to appear either personally or by counsel or both to
27 produce witnesses, and to have subpoenas issued by the Board and

1 cross-examine opposing or adverse witnesses.

2 "(f) [~~(d)~~] The Board shall not be bound by strict rules of
3 procedure or by the laws of evidence in the conduct of its
4 proceedings but the determination shall be founded upon sufficient
5 legal evidence to sustain it.

6 "(g) [~~(e)~~] The Board shall determine the charges upon their
7 merits. The Board shall enter an order in the permanent records of
8 the Board setting forth the findings of fact and law of the Board
9 and its action thereon. A copy of such order of the Board shall be
10 mailed to such applicant or licensee to his last known address by
11 certified mail.

12 "(h) [~~(f)~~] Any person whose license to fit and dispense
13 hearing aids has been refused or has been cancelled, revoked or
14 suspended by the Board, may, within 20 days after making and
15 entering of such order, take an appeal to any district court of
16 Travis County or any district court of the county of his residence.

17 "(i) [~~(g)~~--A--case--reviewed--under--the--provisions-of-this
18 section--proceeds-in-such-district-court-by-trial-de--novo--as--that
19 term--is--used--and-understood-in-appeals-from-justice-of-the-peace
20 courts-to-the-county--courts--of--this--state-] Appeal from the
21 judgment of such district court will lie as other civil cases.

22 "(j) [~~(h)~~] Upon application, the Board may reissue a license
23 to fit and dispense hearing aids to a person whose license has been
24 cancelled or revoked but such application shall not be made prior
25 to the expiration of a period of six months after the order of
26 cancellation or revocation has become final, and such application
27 shall be made in such manner and form as the Board may require.

1 "Section 12. FEES AND EXPENSES. (a) The Board shall
2 establish reasonable and necessary fees for the administration of
3 this Act [~~charge-a-fee-of-\$25.00-for-issuing-a--temporary--training~~
4 ~~permit,--which--fee--must--accompany--the--application--for--a--temporary~~
5 ~~training-permit~~].

6 "(b) [~~The-Board-shall-charge-a-fee-of-\$35.00--for--examining~~
7 ~~an---applicant---for--a--license,--which--fee--must--accompany--the~~
8 ~~application-~~

9 "~~{c}~~--The-Board-shall-charge-a-fee-of-\$50.00-for--issuing--a
10 ~~license-~~

11 "~~{1}~~--Any-person-making-application-for-a-license-without-an
12 ~~examination--as--provided--in-Sections-7-and-8-must-submit-such-fee~~
13 ~~with-such-application-~~

14 "~~{2}~~] Every person passing the examination and meeting the
15 requirements of the Board shall be notified that he is eligible for
16 such license upon payment of the fee herein provided. Such notice
17 shall be by certified mail at the address given on his examination
18 papers. The fee for issuance of such license must be paid by the
19 applicant within 90 days after having been notified. Failure to
20 pay such fee within such time shall constitute a waiver of the
21 right to such person to obtain his license.

22 "~~{d}~~--The-Board--shall--charge--a--fee--of--\$5.00--for--each
23 ~~duplicate-license-or-duplicate-temporary-training-permit-~~]

24 "(c) [~~{e}~~] The Secretary-Treasurer of the Board shall, on or
25 before the 10th day of each month, remit to the State Treasurer all
26 of the fees collected by the Board during the preceding month for
27 deposit in the General Revenue Fund.

1 "(d) Each member of the Board is entitled to a per diem as
 2 set by legislative appropriation for each day that the member
 3 engages in the business of the Board. [~~{f}~~--Each--member--of--the

4 ~~Board--is--entitled-to-a-per-diem-of-\$30-for-each-day-he-is-engaged~~
 5 ~~in-performing-the-duties--of--his--office-]~~ The travel expenses
 6 allowance for members of the Board and its employees shall be
 7 provided in the General Appropriations Act. The executive director
 8 of the Board shall be allowed his actual expenses incurred while
 9 traveling on official business for the Board.

10 "(e) [~~{g}~~] The number of days for which compensation may be
 11 paid to members of the Board shall not exceed two days in any
 12 calendar month except in those months in which examinations are
 13 held, but compensations may never be allowed to exceed six days in
 14 those months in which examinations are held.

15 "(f) [~~{h}~~] The Board may authorize all necessary
 16 disbursements to carry out the provisions of this Act, including
 17 payment of the premium on the bond of the Secretary-Treasurer,
 18 stationery expenses, purchase and maintain or rent equipment and
 19 facilities necessary to carry out the examinations of applications
 20 for license; pay for printing of all licenses; rent and furnish an
 21 office to maintain the permanent records of the Board.

22 "(g) [~~{i}~~] Funds for the administration of this Act shall be
 23 provided by the General Appropriations Act from the General Revenue
 24 Fund.

25 "[~~{j}~~--The-balance-of-all-money-remaining-in-the-'Fitting-and
 26 Dispensing--of--Hearing--Aids--Fund'-account-on-August-31,-1979,-is
 27 transferred-to-the-General-Revenue-Fund-]

1 "Section 13. RENEWAL OF LICENSE. (a) Each license to fit
2 and dispense hearing aids shall be issued for the term of one year
3 and shall, unless suspended or revoked, be renewed annually on
4 September 1 upon payment of the renewal fee.

5 "(b) A person may renew an unexpired license by paying to
6 the Board before the expiration date of the license the required
7 renewal fee.

8 "(c) If a person's license has been expired for not longer
9 than 90 days, the person may renew the license by paying to the
10 Board the required renewal fee and a fee that is one-half of the
11 examination fee for the license.

12 "(d) If a person's license has been expired for longer than
13 90 days but less than two years, the person may renew the license
14 by paying to the Board all unpaid renewal fees and a fee that is
15 equal to the examination fee for the license.

16 "(e) If a person's license has been expired for two years or
17 longer, the person may not renew the license. The person may
18 obtain a new license by submitting to reexamination and complying
19 with the requirements and procedures for obtaining an original
20 license.

21 "(f) Before a license can be renewed the Board shall require
22 certification that all testing equipment, both portable and
23 stationary, used by the licensee has been calibrated within one
24 year prior to the renewal date. [On-or-before--the--first--day--of
25 January,--1972,--every--licensee--under--this--Act--shall--pay--to--the
26 Secretary-Treasurer-of-the-Board-an-annual-renewal--fee--of--\$67.50
27 for-the-renewal-of-his-license-to-fit-and-dispense-hearing-aids-for

1 the--year--1972---On-or-before-the-first-day-of-January,--1973,--and
 2 every-year-thereafter,--every-licensee-under-this-Act-shall--pay--to
 3 the--Secretary-Treasurer--of--the--Board--an--annual-renewal-fee-of
 4 \$125.00-for-renewal-of-his-license-to-fit-and-dispense-hearing-aids
 5 for-the-current-year.---On-receipt-of-said-renewal--fee,--the--Board
 6 shall-issue-an-annual-renewal-certificate-bearing-the-number-of-his
 7 license,--the--year--for--which--it--is--renewed,--and--such--other
 8 information-from-the-records-of-the-Board-as--the--Board--may--deem
 9 necessary-for-the-proper-enforcement-of-this-Act.

10 "[(b) --When--a--licensee-shall-fail-to-pay-his-annual-renewal
 11 fee-by-February-1st-of-each-year,--it-shall-be-the-duty-of-the-Board
 12 to-notify-such-licensee-by-certified-mail-at-his-last-known-address
 13 that-said-annual-renewal-fee-is--due--and--unpaid,--if--the--annual
 14 renewal--fee--is--not--paid--within--60--days-from-the-said-date-of
 15 mailing-such-notice,--the-Board-shall-then-cancel-said-license.]

16 "(g) [(e)] Fitting and dispensing hearing aids without an
 17 annual renewal certificate for the current year as provided herein
 18 shall have the same force and effect and be subject to the same
 19 penalties as fitting and dispensing hearing aids without a license.

20 "[(d) --After--the--Board--shall--have-cancelled-a-license-for
 21 nonpayment-of-the-annual-renewal-fee,--the-Board-may-refuse-to-issue
 22 a-new-license-until-such-fitter-and-dispenser-of-hearing--aids--has
 23 paid-all-previous-unpaid-annual-fees.]

24 "(h) [(e)] The Board shall issue a duplicate license to any
 25 licensee whose license has been lost or destroyed and the Board
 26 shall have the authority to prescribe the procedure and
 27 requirements for the issuance of the duplicate license."

1 "Section 19. EXCEPTIONS. Nothing in this Act shall be
2 construed to apply to the following:

3 "(1) Persons engaged in the practice of measuring human
4 hearing as a part of the academic curriculum of an accredited
5 institution of higher learning, provided such persons or their
6 employees do not sell hearing aids.

7 "~~(2) [Persons-engaged-in-the--practice--of--measuring--human~~
8 ~~hearing---as---a--part--of--a--program--conducted--by--a--nonprofit~~
9 ~~organization--provided-such-organization-or-its-employees-does--not~~
10 ~~sell-hearing-aids-~~

11 "~~(3)~~ Physicians and surgeons duly licensed by the Texas
12 State Board of Medical Examiners and qualified to practice in the
13 State of Texas.

14 "(3) An individual with a master's or doctorate degree in
15 audiology from an accredited college or university may engage in
16 the measurement of human hearing by the use of an audiometer or by
17 any means for the purpose of making selections and adaptations of
18 or recommendations for a hearing aid, provided such persons do not
19 sell hearing aids.

20 "~~(4) --Persons--employed--and--directly---supervised---by---a~~
21 ~~physician--and--surgeon--to-test-or-measure-human-hearing--provided~~
22 ~~such-persons-do-not-sell-hearing-aids-]~~"

23 SECTION 2. Chapter 366, Acts of the 61st Legislature,
24 Regular Session, 1969, as amended (Article 4566-1.01 et seq.,
25 Vernon's Texas Civil Statutes), is amended by adding Sections 12A
26 and 12B to read as follows:

27 "Section 12A. ADVERTISEMENTS. The Board may not adopt rules

1 restricting competitive bidding or advertising by a person
 2 regulated by the Board except to prohibit false, misleading, or
 3 deceptive practices by the person. The Board may not include in
 4 its rules to prohibit false, misleading, or deceptive practices by
 5 a person regulated by the Board a rule that:

6 "(a) restricts the person's use of any medium for
 7 advertising;

8 "(b) restricts the person's personal appearance or use of
 9 his personal voice in an advertisement;

10 "(c) relates to the size or duration of an advertisement by
 11 the person; or

12 "(d) restricts the person's advertisement under a trade
 13 name.

14 "Section 12B. CONSUMER INFORMATION AND COMPLAINTS. (a) The
 15 Board shall prepare information of consumer interest describing the
 16 regulatory functions of the Board and describing the Board's
 17 procedures by which consumer complaints are filed with and resolved
 18 by the Board. The Board shall make information available to the
 19 general public and appropriate state agencies.

20 "(b) Each written contract for services in this state of a
 21 licensed hearing aid fitter and dispenser shall contain the name,
 22 mailing address, and telephone number of the Board. There shall at
 23 all times be prominently displayed in the place of business of each
 24 licensee regulated under this Act a sign containing the name,
 25 mailing address, and telephone number of the Board and a statement
 26 informing consumers that complaints against licensees can be
 27 directed to the Board.

1 "(c) The Board shall establish guidelines for a 30-day trial
2 period on every hearing aid purchased from a licensed hearing aid
3 fitter and dispenser.

4 "(d) The Board shall keep an information file about each
5 complaint filed with the Board relating to a licensee. If a
6 written complaint is filed with the Board relating to a licensee,
7 the Board, at least as frequently as quarterly and until final
8 disposition of the complaint, shall notify the parties to the
9 complaint of the status of the complaint unless the notice would
10 jeopardize an undercover investigation."

11 SECTION 3. A rule adopted by the Texas Board of Examiners in
12 the Fitting and Dispensing of Hearing Aids before September 1,
13 1981, that conflicts with Chapter 366, Acts of the 61st
14 Legislature, Regular Session, 1969 (Article 4566-1.01 et seq.,
15 Vernon's Texas Civil Statutes), as amended by this Act, is void.
16 Within 90 days after September 1, 1981, the board shall repeal the
17 rule.

18 SECTION 4. A person holding office as a member of the Texas
19 Board of Examiners in the Fitting and Dispensing of Hearing Aids on
20 the effective date of this Act continues to hold the office for the
21 term for which the member was originally appointed.

22 SECTION 5. Sections 7 and 20, Chapter 366, Acts of the 61st
23 Legislature, Regular Session, 1969 (Article 4566-1.01 et seq.,
24 Vernon's Texas Civil Statutes), are repealed.

25 SECTION 6. Subdivision 7, Subsection (a), Section 15,
26 Chapter 366, Acts of the 61st Legislature, Regular Session, 1969,
27 as amended by Section 3, Chapter 796, Acts of the 62nd Legislature,

1 Regular Session, 1971 (Article 4566-1.15(a)(7), Vernon's Texas
2 Civil Statutes), is repealed.

3 SECTION 7. Section 14, Chapter 366, Acts of the 61st
4 Legislature, Regular Session, 1969, as amended (Article 4566-1.14,
5 Vernon's Texas Civil Statutes), is amended by adding Subsection (e)
6 to read as follows:

7 "(e) Any individual licensed under the provisions of this
8 Act shall seek personally or through proper referral channels to
9 obtain the following minimal information on each prospective
10 candidate for amplification:

11 "(1) pertinent case history;

12 "(2) otoscopic inspection of the outer ear, including canal
13 and drumhead;

14 "(3) evaluation of hearing acuity utilizing puretone
15 techniques via air and bone conduction pathways through a
16 calibrated system; and

17 "(4) an aided and unaided speech reception threshold and
18 ability to differentiate between the phonemic elements of the
19 language through speech audiometry, utilizing a calibrated system."

20 SECTION 8. This Act takes effect September 1, 1981.

21 SECTION 9. The importance of this legislation and the
22 crowded condition of the calendars in both houses create an
23 emergency and an imperative public necessity that the
24 constitutional rule requiring bills to be read on three several
25 days in each house be suspended, and this rule is hereby suspended.

HOUSE COMMITTEE REPORT

1ST PRINTING

F

By Doggett (Coleman)

S.B. No. 604

Substitute the following for S.B. No. 604:

By Evans

C.S.S.B. No. 604

A BILL TO BE ENTITLED

AN ACT

relating to continuation of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids and regulation of the fitters and dispensers of hearing aid devices.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 1, 2, 3, 6, 9, 10, 11, 12, 13, and 19, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 1. DEFINITIONS. In this Act, unless the context requires a different definition:

(a) "Board" means the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.

(b) "License" means license issued by the Board under this Act to a person authorized to fit and dispense hearing aids.

(c) "Temporary Training Permit" means a permit issued by the Board to persons authorized to fit and dispense hearing aids only under the supervision of a person who holds a license under this Act.

(d) "Hearing aid" means any instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing, but as used herein shall not mean repair services, replacements for defective parts and shall not include batteries, cords and accessories.

1 (e) "Sell" or "sale" includes a transfer of title or of the
2 right to use by lease, bailment, or any other contract. Provided,
3 for the purpose of this Act, the term "sell" or "sale" shall not
4 include sales at wholesale by manufacturers to persons licensed
5 under this Act, or to distributors for distribution and sale to
6 persons licensed under this Act.

7 (f) "Fitting and Dispensing hearing aids" means the
8 measurement of human hearing by the use of an audiometer or by any
9 means for the purpose of making selections, adaptations and/or
10 sales of hearing aids. The term also includes the sale of hearing
11 aids, and the making of impressions for earmolds to be used as a
12 part of the hearing aid.

13 (g) "30-day trial period" means the period in which a person
14 may cancel the purchase of a hearing aid.

15 Sec. 2. BOARD OF EXAMINERS. (a) The Texas Board of
16 Examiners in the Fitting and Dispensing of Hearing Aids is hereby
17 created. The Board shall be composed of nine members appointed by
18 the Governor with the advice and consent of the senate.
19 Appointments shall be made without regard to the race, creed, sex,
20 religion, or national origin of the appointees. The Board members
21 must have [with] the following qualifications, to-wit:

22 (1) Five of such members shall possess the necessary
23 qualifications to fit and dispense hearing aids in this state and
24 have been residents of this state actually engaged in fitting and
25 dispensing hearing aids for at least five years immediately
26 preceding their appointment. No more than two of such five members
27 shall be employed by, franchised by, or associated exclusively with

1 the same hearing aid manufacturer;

2 (2) Two board members must be members of the general public.
3 A person is eligible for appointment as a public member if the
4 person and the person's spouse are not licensed by an occupational
5 regulatory agency in the field of health care; are not employed by
6 and do not participate in the management of a business entity or
7 other organization that provides health-care services or that
8 sells, manufactures, or distributes health-care supplies or
9 equipment; and do not own, control, or have, directly or
10 indirectly, an interest in a business entity or other organization
11 that provides health-care services or that sells, manufactures, or
12 distributes health-care supplies or equipment [~~One-of-such-members~~
13 ~~shall-be-a-citizen-of-the-United-States--and--a--resident--of--this~~
14 ~~state--for-a-period-of-at-least-two-years-immediately-preceding-his~~
15 ~~appointment-and-such-member-shall-not-have-a-financial-interest--in~~
16 ~~a--hearing--aid--manufacturing--company--or-a-wholesale-hearing-aid~~
17 ~~company~~];

18 (3) One of such members shall be a citizen of the United
19 States and a resident of this state for a period of at least two
20 years immediately preceding his appointment, shall be an active
21 practicing physician or surgeon duly licensed to practice in this
22 state by the Texas State Board of Medical Examiners, and specialize
23 in the practice of otolaryngology. Such member shall not have a
24 financial interest in a hearing aid manufacturing company or a
25 wholesale or retail hearing aid company; and

26 (4) One of such members shall be a citizen of the United
27 States and a resident of this state for a period of at least two

1 years immediately preceding his appointment and shall be an active
2 practicing audiologist. Such member shall not have a financial
3 interest in a hearing aid manufacturing company or a wholesale or
4 retail hearing aid company.

5 (b) One who has served two full consecutive terms on the
6 Board shall not be eligible for a reappointment to the Board for a
7 period of 12 months immediately following the expiration of the
8 second full term.

9 (c) In the event of death, resignation or removal of any
10 members, the vacancy of the unexpired terms shall be filled by the
11 Governor in the same manner as other appointments. Each appointee
12 to the Board shall, within 15 days from the date of his
13 appointment, qualify by taking the constitutional oath of office.
14 Upon presentation of such oath, the Secretary of State shall issue
15 commissions to appointees as evidence of their authority to act as
16 members of the Board.

17 (d) Members hold office for staggered terms of six years,
18 and each member shall continue until a successor is appointed and
19 qualifies. [~~The--members-of-the-initial-Board,-to-be-appointed-by~~
20 ~~the-Governor-to-take-office-on-the--effective--date--of--this--Act,~~
21 ~~shall-be-divided-into-three-classes,-to-wit:-Class-One,-Class-Two,~~
22 ~~and--Class--Three,-and-their-terms-of-office-shall-be-determined-by~~
23 ~~lot-at-the-first-meeting-of-the-Board.-The-three-Class-One-members~~
24 ~~shall-hold-office-for-two-years,-and-the-three--Class--Two--members~~
25 ~~shall-hold-office-for-four-years,-and-the-three-Class-Three-members~~
26 ~~shall--hold--office--for--six--years-respectively,-from-the-time-of~~
27 ~~their--appointment.-Biennially--thereafter,-the--Governor--shall~~

1 ~~appoint-three-members-of-the-Board-to-hold-office-for-a-term-of-six~~
2 ~~years.]~~

3 (e) The Board shall be represented by the Attorney General
4 and the District and County Attorneys of the state.

5 (f) A person who is required to register as a lobbyist under
6 Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973,
7 as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may
8 not serve as a member of the Board or act as the general counsel to
9 the Board.

10 (g) A member or employee of the Board may not be an officer,
11 employee, or paid consultant of a statewide or national trade
12 association in the hearing aid industry. A member or employee of
13 the Board may not be related within the second degree by affinity
14 or consanguinity to a person who is an officer, employee, or paid
15 consultant of a statewide or national trade association in the
16 regulated industry.

17 (h) It is a ground for removal from the Board if a member:

18 (1) does not have at the time of appointment the
19 qualifications required by Subsection (a) of this section for
20 appointment to the Board;

21 (2) does not maintain during his service on the Board the
22 qualifications required by Subsection (a) of this section for
23 appointment to the Board;

24 (3) violates a prohibition established by Subsection (f) or
25 (g) of this section; or

26 (4) fails to attend at least half of the regularly scheduled
27 Board meetings held in a calendar year, excluding meetings held

1 while the person was not a Board member.

2 (i) The validity of an action of the Board is not affected
3 by the fact that it was taken when a ground for removal of a member
4 of the Board existed.

5 (j) [†f†] The Texas Board of Examiners in the Fitting and
6 Dispensing of Hearing Aids is subject to the Texas Sunset Act, as
7 amended (Article 5429k, Vernon's Texas Civil Statutes); and unless
8 continued in existence as provided by that Act the board is
9 abolished, and this Act expires effective September 1, 1993 [1981].

10 (k) The Board is subject to the open meetings law, Chapter
11 271, Acts of the 60th Legislature, Regular Session, 1967, as
12 amended (Article 6252-17, Vernon's Texas Civil Statutes), and the
13 Administrative Procedure and Texas Register Act, as amended
14 (Article 6252-13a, Vernon's Texas Civil Statutes).

15 Sec. 3. BOARD ORGANIZATION AND MEETINGS. Within 60 days
16 after their appointment and qualification the initial Board shall
17 hold its first meeting and elect a President, Vice-President, and
18 Secretary-Treasurer. The term of office for all officers of the
19 Board shall be for a period of one year.

20 The Board shall hold regular meetings at least twice a year
21 at which an examination of applicants for license shall be given.
22 [~~Not--less--than--30--days--notice--of--such--meeting--shall--be--given--by~~
23 ~~publication--in--at--least--three--daily--newspapers--of--general~~
24 ~~circulation--to--be--selected--by--the--Board--Written--notice--of--such~~
25 ~~regular--meetings--of--the--Board--shall--be--given--to--the--members--by--the~~
26 ~~Secretary-Treasurer--of--the--Board--by--certified--mail--not--less--than--30~~
27 ~~days--prior--to--the--date--of--such--regular--meeting--]~~ Special meetings

1 of the Board shall be held upon [~~the-written~~] request of a majority
 2 of the members or upon the call of the President. [~~Written--notice~~
 3 ~~of--such-special-meetings-of-the-Board-shall-be-given-to-members-by~~
 4 ~~the-Secretary-Treasurer-of-the-Board-by--certified--mail--not--less~~
 5 ~~than--30--days--prior--to--the--date--of--the-special-meetings-~~] A
 6 majority of the Board shall constitute a quorum for the transaction
 7 of business and should a quorum not be present on the day appointed
 8 for any meeting, those present may adjourn from day to day until a
 9 quorum be present provided such period shall not be longer than
 10 three successive days.

11 Sec. 6. EXAMINATION: APPLICATION. (a) Every person
 12 desiring to engage in fitting and dispensing hearing aids in the
 13 State of Texas shall be required to pass an examination given by
 14 the Texas Board of Examiners in the Fitting and Dispensing of
 15 Hearing Aids.

16 (b) The applicant shall make application, furnishing to the
 17 Secretary-Treasurer of the Board on forms to be furnished by the
 18 Board, sworn evidence that he has attained the age of majority [~~18~~
 19 ~~years,--is--of--good--moral--character,--is--free--of--contagious-or~~
 20 ~~infectious-disease,~~] and has graduated from an accredited high
 21 school or equivalent, and such other information as the Board may
 22 deem necessary for the enforcement of this Act.

23 (c) The examination shall consist of written, oral or
 24 practical tests that shall be objective in method and applied in a
 25 consistent manner. The examination shall cover the following areas
 26 as they relate to the fitting and dispensing of hearing aids [~~in~~
 27 ~~the--following--areas-as-they-pertain-to-the-fitting-and-dispensing~~

1 ~~of-hearing-aids,-to-wit~~]:

- 2 (1) Basic physics of sound;
- 3 (2) The structure and function of hearing aids;
- 4 (3) Fitting of hearing aids;
- 5 (4) Pure tone audiometry, including air conduction testing
- 6 and bone conduction testing;
- 7 (5) Live voice and/or record voice speech audiometry;
- 8 (6) Masking when indicated;
- 9 (7) Recording and evaluation of audiograms and speech
- 10 audiometry to determine the hearing aid candidacy;
- 11 (8) Selection and adaption of hearing aids and testing of
- 12 hearing aids; and
- 13 (9) Taking of earmold impressions.

14 (d) No part of the examination shall consist of tests

15 requiring knowledge of the diagnosis and/or treatment of any

16 disease or injury to the human body.

17 (e) Each applicant shall be given due notice of the date and

18 place of the examination and the subjects, areas, and/or skills

19 that will be included within such examination, and there shall be

20 no changes in said subjects, areas, and/or skills after the date of

21 the examination has been announced and publicized [~~nor-shall-there~~

22 ~~be-more-than-one-change-or-group-of-changes--in--any--one--calendar~~

23 ~~year~~]. All examinations shall be conducted in writing and by such

24 other means as the Board shall determine adequate to ascertain the

25 qualifications of applicants. Upon reexamination, a person who has

26 previously failed shall be examined only on those portions of the

27 examination which he failed. [~~All--applicants--examined--during--a~~

~~given--calendar--year--shall-be-given-the-same-examination-]~~ Every applicant successfully passing the examination and meeting all the requirements of this Act shall be registered by the Board as possessing the qualifications required by this Act and shall receive from the Board a license to fit and dispense hearing aids in this state.

(f) The Board, in its discretion, may refuse to examine an applicant if he has been convicted of a felony or a misdemeanor that involved moral turpitude.

(g) Within 30 days after the date a licensing examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify each examinee of the results of the examination within two weeks after the date the Board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the Board shall notify each examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination administered under this Act, the Board shall furnish the person with an analysis of the person's performance on the examination.

Sec. 9. TEMPORARY TRAINING PERMIT. (a) The Board shall grant a temporary training permit to fit and dispense hearing aids to any person applying to the Board who has never taken the examination provided in the Act and who possesses the qualifications in Subsection (b) of Section 6, of this Act, upon

1 written application to the Secretary-Treasurer of the Board, the
2 applicant shall make application on forms to be furnished by the
3 Board furnishing sworn evidence that he possesses the
4 qualifications contained in Subsection (b), Section 6, of this Act,
5 that he has never taken the examination provided in this Act, and
6 that he has never previously been issued a temporary training
7 permit to fit and dispense hearing aids by the Board.

8 (b) The application for a temporary permit shall be
9 accompanied by the affidavit of a person duly licensed and
10 qualified to fit and dispense hearing aids in this state. The
11 accompanying affidavit shall state that the applicant, if granted a
12 temporary training permit, will be supervised by the affiant in all
13 work done by applicant under such temporary training permit, that
14 affiant will notify the Board within 10 days following applicant's
15 terminating of supervision by affiant.

16 (c) A temporary training permit shall authorize the holder
17 thereof, to fit and dispense hearing aids for a period of one year
18 or until the holder thereof shall have successfully passed the
19 examination required for a license under this Act, whichever occurs
20 first.

21 (d) A temporary training permit shall automatically become
22 void at the end of the period of 6 months from the date of its
23 issuance unless extended for an additional period not to exceed 6
24 months by the Board. The Board shall never extend a temporary
25 training permit more than one time.

26 (e) The Board shall establish educational guidelines, both
27 formal and practical, for the training of temporary permit holders.

The training guidelines shall include directions to the training supervisor about subject matter to be taught, length of the training period, extent of trainee contact with the public, and responsibility of the training supervisor for direct supervision of all aspects of the training period.

Sec. 10. GROUND FOR DISCIPLINARY ACTIONS [~~REFUSAL---TO LICENSE---AND---REVOCATION---OR---SUSPENSION---OF-LICENSE-GROUNDS~~]. The Board shall revoke or suspend a permit or license, place on probation a person whose permit or license has been suspended, or reprimand a permittee or licensee for any of the following violations [~~The--Board--may,--in-its-discretion,--refuse-to-issue-a license-to-any-applicant-and-may--cancel,--revoke--or--suspend--the operation--of--any--license-by-it-granted,--for-any-of-the-following reasons~~]:

[~~(1)---The---applicant---or---licensee---is---guilty---of---gross immorality.~~

[~~(2)---The---applicant---or---licensee-is-unfit-or-incompetent-by reason-of-negligence.~~]

(1) [(3)] The temporary trainee [applicant] or licensee is guilty of any fraud, deceit or misrepresentation in the fitting and dispensing of hearing aids or in his seeking of a license under this Act.

(2) [(4)] The temporary trainee [applicant] or licensee is [has--been] convicted of a felony or a misdemeanor which involves [involved] moral turpitude.

(3) The temporary trainee or licensee is unable to fit and dispense hearing aids with reasonable skill and safety to customers

1 by reason of incompetence, age, illness, drunkenness, excessive use
 2 of drugs, narcotics, chemicals, or any other type of material or as
 3 a result of any condition causing the temporary trainee or licensee
 4 to become mentally or physically incapable as determined by a court
 5 of competent jurisdiction [~~(5)--The--applicant--or--licensee--is--a~~
 6 ~~habitual--drunkard--or--is--addicted--to--the--use--of--morphine,--cocaine,~~
 7 ~~or--other--drugs--having--similar--effects--or--has--become--insane--or--has~~
 8 ~~been--adjudged--by--a--court--of--competent--jurisdiction--to--be--of--unsound~~
 9 ~~mind~~].

10 (4) [~~(6)~~] The temporary trainee [~~applicant~~] or licensee has
 11 violated any of the provisions of this Act or Board rules.

12 (5) [~~(7)~~] The licensee has knowingly, directly or indirectly
 13 employed, hired, procured, or induced a person not licensed to fit
 14 and dispense hearing aids in this state, to so fit and dispense
 15 hearing aids.

16 (6) [~~(8)~~] The licensee aids or abets any person not duly
 17 licensed under this Act in the fitting or dispensing of hearing
 18 aids.

19 (7) [~~(9)~~] The licensee lends, leases, rents, or in any other
 20 manner places his license at the disposal or in the service of any
 21 person not licensed to fit and dispense hearing aids in this state.

22 (8) [~~(10)~~] The licensee knowingly used or caused or promoted
 23 the use of any advertising matter, promotional literature,
 24 guarantees, warranty, disseminated or published with misleading,
 25 deceiving or false information. It is the intention of the
 26 Legislature that the provisions of this subdivision [~~Subsection~~
 27 ~~(10)--and--the--following--Subsection--(11)~~] be interpreted insofar as

possible to coincide with the orders and rules of the Federal Trade Commission on such subjects.

[(11) --The--licensee--advertised--a-particular-model,-type-or kind-of--hearing--aid--for--sale--when--purchasers--or--prospective purchasers--responding--to-the-advertisement-cannot-purchase-or-are dissuaded-from-purchasing-the-advertised-model,-type,-or-kind--when it--is--established--that--the--purpose--of-the-advertisement-is-to obtain-prospects-for-the-sale-of-a-different-model,-type--or--kind than-was-advertised-]

(9) [(12)] The licensee represented that the service or advice of a person licensed to practice medicine by the Texas State Board of Medical Examiners is used or made available in the selection, fitting, adjustment, maintenance, or repair of a hearing aid when such representation was not true.

(10) [(13)] The licensee used the term "doctor," "clinic" or any like words, abbreviations or symbols in the conduct of his business which would tend to connote that the licensee was a physician or surgeon.

[(14) --The--licensee--defamed-another-licensee-under-this-Aet by-falsely-imputing--to--him--dishonorable--conduct,-inability--to perform-contracts,-questionable-credit-standing,-or-any-other-false representation--or--falsely--disparaging-the-products-of-such-other licensee-in-any-respect,-or-the-business-methods,-selling--prices, values,-credit-terms,-policies,-or-services-of-such-other-licensee-

[(15) --The--licensee--displayed--competitive--products-in-his place-of-business,-or-in-the--advertising--in--such--manner--as--to falsely-disparage-them-

[(16) -- The licensee quoted prices of competitive hearing aids or devices without disclosing that the prices were not the present, correct, --- current --- prices, -- or -- falsely -- showed, -- demonstrated -- or represented competitive hearing aids models as being -- the -- correct, current model of such hearing aids.]

[(17) -- The -- licensee -- imitated -- or -- simulated -- the trademark, tradename, -- brand, -- or -- label of another licensee under this Act -- with the --- intent -- to -- mislead -- or -- deceive -- purchasers -- or -- prospective purchasers.]

[(18) -- The licensee used in his advertising the -- name, -- model name or trademark of a particular manufacturer of hearing aids with the -- intent -- to -- falsely -- imply a relationship with such manufacturer that does not exist.]

(11) [(19)] The licensee obtained or attempted to obtain information concerning the business of another licensee under this Act by bribery, or attempting to bribe an employee or agent of such other licensee or by the impersonation of one in authority.

(12) [(20)] The licensee directly or indirectly gave, or offered to give or permitted or caused to be given money or anything of value to any person who advises others in a professional capacity as an inducement to influence such person to influence those persons such person advises in a professional capacity to purchase or contract to purchase products sold or offered for sale by licensee or to refrain from purchasing or contracting to purchase products sold or offered for sale by any other licensee under this Act.

(13) [(21)] The licensee falsely represented to a purchaser

that a hearing aid was "custom-made," "made to order," "prescription-made" or any other representations that such hearing aid was specially fabricated for the purchaser.

(14) [~~22~~] The licensee refused to accept responsibility for the acts of a temporary training permittee in a licensee's employ and under licensee's supervision.

(15) [~~23~~] The licensee with fraudulent intent, engaged in the fitting and dispensing of hearing aids under a false name or alias.

[~~24~~--The--licensee--had--failed--to--actively--engage--in--the fitting--and--dispensing--of--hearing--aids--for--a--period--of--three consecutive--years--]

Sec. 11. DISCIPLINARY ACTIONS [PROCEDURE]. (a) If the Board proposes to refuse a person's application for examination, to suspend or revoke a person's license, or to probate or reprimand a person, the person is entitled to a hearing before the Board.

(b) The proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) [~~a~~] Proceedings [~~for--revocation--or--suspension--of--a license~~] shall be commenced by filing charges with the Board in writing and under oath. The charges may be made by any person or persons.

(d) [~~b~~] The president of the Board shall fix a time and place for a hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing to be served upon the applicant or licensee against whom charges have

1 been filed at least 30 days prior thereto. Service of such charges
2 and notice of hearing thereon may be given by certified mail to the
3 last known address of such licensee or applicant.

4 (e) [~~(e)~~] At the hearing, such applicant or licensee shall
5 have the right to appear either personally or by counsel or both to
6 produce witnesses, and to have subpoenas issued by the Board and
7 cross-examine opposing or adverse witnesses.

8 (f) [~~(d)~~] The Board shall not be bound by strict rules of
9 procedure or by the laws of evidence in the conduct of its
10 proceedings but the determination shall be founded upon sufficient
11 legal evidence to sustain it.

12 (g) [~~(e)~~] The Board shall determine the charges upon their
13 merits. The Board shall enter an order in the permanent records of
14 the Board setting forth the findings of fact and law of the Board
15 and its action thereon. A copy of such order of the Board shall be
16 mailed to such applicant or licensee to his last known address by
17 certified mail.

18 (h) [~~(f)~~] Any person whose license to fit and dispense
19 hearing aids has been refused or has been cancelled, revoked or
20 suspended by the Board, may, within 20 days after making and
21 entering of such order, take an appeal to any district court of
22 Travis County or any district court of the county of his residence.

23 (i) [~~(g)~~--A--case--reviewed--under--the--provisions--of--this
24 section--proceeds--in--such--district--court--by--trial--de--novo--as--that
25 term--is--used--and-understood-in-appeals-from-justice-of-the-peace
26 courts--to--the-county--courts--of--this--state.] Appeal from the
27 judgment of such district court will lie as other civil cases.

(j) [{h}] Upon application, the Board may reissue a license to fit and dispense hearing aids to a person whose license has been cancelled or revoked but such application shall not be made prior to the expiration of a period of six months after the order of cancellation or revocation has become final, and such application shall be made in such manner and form as the Board may require.

Sec. 12. FEES AND EXPENSES. (a) The Board shall establish reasonable and necessary fees for the administration of this Act, in amounts not to exceed:

1. <u>Temporary Training Permit</u>	<u>\$ 40</u>
2. <u>Examination Fee</u>	<u>125</u>
3. <u>License Fee</u>	<u>75</u>
4. <u>License Renewal Fee</u>	<u>195</u>
5. <u>Duplicate Document Fee</u>	<u>10</u> [charge-a-fee of-\$25.00-for-issuing-a-temporary-training-permit,--which--fee--must accompany-the-application-for-a-temporary-training-permit].

(b) [The-Board-shall-charge-a-fee-of-\$35.00-for-examining-an applicant--for-a-license,--which-fee-must-accompany-the-application-

[{e}]--The-Board-shall-charge-a-fee-of-\$50.00--for--issuing--a license-

[{i}]--Any--person-making-application-for-a-license-without-an examination-as-provided-in-Sections-7-and-8-must--submit--such--fee with-such-application-

Every person passing the examination and meeting the requirements of the Board shall be notified that he is eligible for such license upon payment of the fee herein provided. Such notice shall be by certified mail at the address given on his examination

papers. The fee for issuance of such license must be paid by the applicant within 90 days after having been notified. Failure to pay such fee within such time shall constitute a waiver of the right to such person to obtain his license.

~~[(d) --The--Board--shall--charge--a--fee--of--\$5.00--for--each duplicate-license-or-duplicate-temporary-training-permit-]~~

(c) ~~[(e)]~~ The Secretary-Treasurer of the Board shall, on or before the 10th day of each month, remit to the State Treasurer all of the fees collected by the Board during the preceding month for deposit in the General Revenue Fund.

(d) Each member of the board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the general appropriations act. ~~[Each-member-of-the-Board-is-entitled to-a-per-diem-of-\$30-for-each-day-he-is-engaged-in--performance--of the--duties--of--his--office-]~~ The travel expenses allowance for members of the Board and its employees shall be provided in the General Appropriations Act. The executive director of the Board shall be allowed his actual expenses incurred while traveling on official business for the Board.

(e) ~~[(g)]~~ The number of days for which compensation may be paid to members of the Board shall not exceed two days in any calendar month except in those months in which examinations are held, but compensations may never be allowed to exceed six days in

those months in which examinations are held.

(f) [(h)] The Board may authorize all necessary disbursements to carry out the provisions of this Act, including payment of the premium on the bond of the Secretary-Treasurer, stationery expenses, purchase and maintain or rent equipment and facilities necessary to carry out the examinations of applications for license; pay for printing of all licenses; rent and furnish an office to maintain the permanent records of the Board.

(g) [(i)] Funds for the administration of this Act shall be provided by the General Appropriations Act from the General Revenue Fund. The state auditor shall audit the financial transactions of the board each fiscal year.

[(j) --The--balance-of-all-money-remaining-in-the--"Fitting-and Dispensing-of-Hearing-Aids-Fund"--account-on--August--31--1979--is transferred-to-the-General-Revenue-Fund-]

Sec. 13. RENEWAL OF LICENSE. (a) Each license to fit and dispense hearing aids shall be issued for the term of one year and shall, unless suspended or revoked, be renewed annually on September 1 on payment of the renewal fee.

(b) A person may renew his unexpired license by paying to the Board before the expiration date of the license the required renewal fee.

(c) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the Board the required renewal fee and a fee that is one-half of the examination fee for the license.

(d) If a person's license has been expired for more than 90

1 days but less than two years, the person may renew the license by
 2 paying to the Board all unpaid renewal fees and a fee that is equal
 3 to the examination fee for the license.

4 (e) If a person's license has been expired for two years or
 5 more, the person may not renew the license. The person may obtain
 6 a new license by submitting to reexamination and complying with the
 7 requirements and procedures for obtaining an original license.

8 (f) Before a license can be renewed, the Board shall require
 9 certification that all testing equipment, both portable and
 10 stationary, used by the licensee has been calibrated within one
 11 year prior to the renewal date. [On-or-before--the--first--day--of
 12 January,--1972,--every--licensee--under--this--Act--shall--pay--to--the
 13 Secretary-Treasurer-of-the-Board-an-annual-renewal--fee--of--\$67.50
 14 for-the-renewal-of-his-license-to-fit-and-dispense-hearing-aids-for
 15 the--year--1972.---On-or-before-the-first-day-of-January,--1973,--and
 16 every-year-thereafter,--every--licensee--under--this--Act--shall--pay--to
 17 the--Secretary-Treasurer--of--the--Board--an--annual-renewal-fee-of
 18 \$125.00-for-renewal-of-his-license-to-fit-and-dispense-hearing-aids
 19 for-the-current-year.---On-receipt-of-said-renewal--fee,--the--Board
 20 shall-issue-an-annual-renewal-certificate-bearing-the-number-of-his
 21 license,--the--year--for--which--it--is--renewed,--and--such--other
 22 information-from-the-records-of-the-Board-as--the--Board--may--deem
 23 necessary-for-the-proper-enforcement-of-this-Act.

24 [(b) --When--a--licensee--shall--fail--to--pay--his--annual--renewal
 25 fee-by-February-1st-of-each-year,--it--shall--be--the--duty--of--the--Board
 26 to-notify-such-licensee-by-certified-mail-at-his-last-known-address
 27 that-said-annual-renewal-fee-is--due--and--unpaid,--if--the--annual

1 ~~renewal--fee--is--not--paid--within--60--days--from--the--said--date--of~~
2 ~~mailing--such--notice,--the--Board--shall--then--cancel--said--license--]~~

3 (g) [~~e~~] Fitting and dispensing hearing aids without an
4 annual renewal certificate for the current year as provided herein
5 shall have the same force and effect and be subject to the same
6 penalties as fitting and dispensing hearing aids without a license.

7 [~~d~~--After--the--Board--shall--have--cancelled--a--license--for
8 ~~nonpayment--of--the--annual--renewal--fee,--the--Board--may--refuse--to--issue~~
9 ~~a--new--license--until--such--fitter--and--dispenser--of--hearing--aids--has~~
10 ~~paid--all--previous--unpaid--annual--fees--]~~

11 (h) [~~e~~] The Board shall issue a duplicate license to any
12 licensee whose license has been lost or destroyed and the Board
13 shall have the authority to prescribe the procedure and
14 requirements for the issuance of the duplicate license.

15 Sec. 19. EXCEPTIONS. Nothing in this Act shall be construed
16 to apply to the following:

17 (1) Persons engaged in the practice of measuring human
18 hearing as a part of the academic curriculum of an accredited
19 institution of higher learning, provided such persons or their
20 employees do not sell hearing aids.

21 (2) [~~Persons--engaged--in--the--practice--of--measuring--human~~
22 ~~hearing--as--a--part--of--a--program--conducted--by--a--nonprofit~~
23 ~~organization,--provided--such--organization--or--its--employees--does--not~~
24 ~~sell--hearing--aids--]~~

25 [~~3~~] Physicians and surgeons duly licensed by the Texas
26 State Board of Medical Examiners and qualified to practice in the
27 State of Texas.

1 (3) An individual with a master's or doctorate degree in
2 audiology from an accredited college or university may engage in
3 the measurement of human hearing by the use of an audiometer or by
4 any means for the purpose of making selections and adaptations of
5 or recommendations for a hearing aid, provided such persons do not
6 sell hearing aids.

7 [(4)--Persons-employed-and-directly-supervised-by-a-physician
8 and-surgeon-to-test-or-measure-human-hearing,-provided-such-persons
9 do-not-sell-hearing-aids-]

10 SECTION 2. Chapter 366, Acts of the 61st Legislature,
11 Regular Session, 1969, as amended (Article 4566-1.01 et seq.,
12 Vernon's Texas Civil Statutes), is amended by adding Sections 4A,
13 12A, and 12B to read as follows:

14 Sec. 4A. PERSONNEL POLICIES. (a) The President of the
15 Board or his designee shall develop an intra-agency career ladder
16 program, one part of which shall be the intra-agency posting of all
17 non-entry-level positions for at least 10 days before any public
18 posting.

19 (b) The President of the Board or his designee shall develop
20 a system of annual performance evaluations based on measurable job
21 tasks. All merit pay for Board employees must be based on the
22 system established under this subsection.

23 The board may recognize, prepare, or carry out continuing
24 education programs for its licensees. Participation in the
25 programs is voluntary.

26 Sec. 12A. ADVERTISEMENTS. The Board may not adopt rules
27 restricting competitive bidding or advertising by a person

1 regulated by the Board except to prohibit false, misleading, or
2 deceptive practices by the person. The Board may not include in
3 its rules to prohibit false, misleading, or deceptive practices by
4 a person regulated by the Board a rule that:

5 (1) restricts the person's use of any medium for
6 advertising;

7 (2) restricts the person's personal appearance or use of his
8 voice in an advertisement;

9 (3) relates to the size or duration of an advertisement by
10 the person; or

11 (4) restricts the person's advertisement under a trade name.

12 Sec. 12B. CONSUMER INFORMATION AND COMPLAINTS. (a) The
13 Board shall prepare information of consumer interest describing the
14 regulatory functions of the Board and the Board's procedures by
15 which consumer complaints are filed with and resolved by the Board.
16 The Board shall make the information available to the general
17 public and appropriate state agencies.

18 (b) Each written contract for services in this state of a
19 licensed hearing aid fitter and dispenser shall contain the name,
20 mailing address, and telephone number of the Board. There shall at
21 all times be prominently displayed in the place of business of each
22 licensee regulated under this Act a sign containing the name,
23 mailing address, and telephone number of the Board and a statement
24 informing consumers that complaints against licensees can be
25 directed to the Board.

26 (c) The Board shall establish guidelines for a 30-day trial
27 period on every hearing aid purchased from a licensed hearing aid

1 fitter and dispenser.

2 (d) The Board shall keep an information file about each
3 complaint filed with the Board relating to a licensee. If a
4 written complaint is filed with the Board relating to a licensee,
5 the Board, at least as frequently as quarterly and until final
6 disposition of the complaint, shall notify the parties to the
7 complaint of the status of the complaint unless the notice would
8 jeopardize an undercover investigation.

9 SECTION 3. A rule adopted by the Texas Board of Examiners in
10 the Fitting and Dispensing of Hearing Aids before September 1,
11 1981, that conflicts with Chapter 366, Acts of the 61st
12 Legislature, Regular Session, 1969 (Article 4566-1.01 et seq.,
13 Vernon's Texas Civil Statutes), as amended by this Act, is void.
14 Within 90 days after September 1, 1981, the board shall repeal the
15 rule.

16 SECTION 4. A person holding office as a member of the Texas
17 Board of Examiners in the Fitting and Dispensing of Hearing Aids on
18 the effective date of this Act continues to hold the office for the
19 term for which the member was originally appointed.

20 SECTION 5. Sections 7 and 20, Chapter 366, Acts of the 61st
21 Legislature, Regular Session, 1969 (Article 4566-1.01 et seq.,
22 Vernon's Texas Civil Statutes), are repealed.

23 SECTION 6. Subdivision 7, Subsection (a), Section 15,
24 Chapter 366, Acts of the 61st Legislature, Regular Session, 1969,
25 as amended by Section 3, Chapter 796, Acts of the 62nd Legislature,
26 Regular Session, 1971 (Article 4566-1.15(a)(7), Vernon's Texas
27 Civil Statutes), is repealed.

1 SECTION 7. Section 14, Chapter 366, Acts of the 61st
2 Legislature, Regular Session, 1969, as amended (Article 4566-1.14,
3 Vernon's Texas Civil Statutes), is amended by adding Subsection (e)
4 to read as follows:

5 (e) Any individual licensed under this Act shall seek
6 personally or through proper referral channels to obtain the
7 following minimal information on each prospective candidate for
8 amplification:

9 (1) pertinent case history;

10 (2) otoscopic inspection of the outer ear, including canal
11 and drumhead;

12 (3) evaluation of hearing acuity utilizing puretone
13 techniques via air and bone conduction pathways through a
14 calibrated system; and

15 (4) an aided and unaided speech reception threshold and
16 ability to differentiate between the phonemic elements of the
17 language through speech audiometry, utilizing a calibrated system.

18 SECTION 8. (a) This Act takes effect September 1, 1981.

19 (b) The requirements under Section 4A, Chapter 366, Acts of
20 the 61st Legislature, Regular Session, 1969, as added by this Act,
21 that the president of the board develop an intra-agency career
22 ladder program and a system of annual performance evaluations,
23 shall be implemented before September 1, 1982. The requirement of
24 Section 4A that merit pay is to be based on the performance
25 evaluation system shall be implemented before September 1, 1983.

26 SECTION 9. The importance of this legislation and the
27 crowded condition of the calendars in both houses create an

C.S.S.B. No. 604

1 emergency and an imperative public necessity that the
2 constitutional rule requiring bills to be read on three several
3 days in each house be suspended, and this rule is hereby suspended.

The Honorable Bill Clayton
Speaker of the House of Representatives

May 11, 1981
(date)

We, your COMMITTEE ON GOVERNMENT ORGANIZATION, to whom was referred SB 007, have had the same under consideration and beg to report back with the recommendation that it (measure)

Total

<u>8</u>	aye
<u>0</u>	nay
<u>1</u>	present, not voting
<u>2</u>	absent

CHAIRMAN

COMMITTEE COORDINATOR

BILL ANALYSIS

Background Information

The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids is subject to the Texas Sunset Act and unless new enabling legislation is passed by the 67th Legislature, the board will be abolished effective September 1, 1981. The Sunset Commission has recommended that the board be continued with modification of functions.

The general purpose of the Hearing Aid Fitters and Dispensers Act is to regulate the practice of hearing aid fitting and dispensing. Responsibilities include qualifying license applications, issuing license, and preventing the unauthorized practice of hearing aid fitting and dispensing. Operations are supported through Legislative appropriations from the General Revenue Fund.

Purpose

C.S.S.B. 604 proposes that the Board of Examiners in the Fitting and Dispensing of Hearing Aids be continued and that the composition of the nine-member board include two public members. A conflict-of-interest provision is included for all board members, which prohibits members or employees of the board from serving as an officer, employee or paid consultant of a related trade association. Registered lobbyists are prohibited from serving as a member of the board or as the board general counsel.

The proposed legislation also expands the board's enforcement authority to include a broader range of sanctions. Other changes include allowing the board members per diem as set in the General Appropriations Act; requiring the preparation of consumer information; clarifying board hearing requirements; and prohibiting the promulgation of rules restricting advertising and competitive bidding.

Section by Section Analysis

SECTION 1: Amends Article 4566-1.01 et seq., V.T.C.S., Sections 1, 2, 3, 6, 9, 10, 11, 12, 13 and 19.

Sec. 1: Definitions. Adds definition of "30-day trial period".

Sec. 2: Calls for nondiscriminatory board appointments; defines board membership as five licensed fitters and dispensers, two members of the general public, one licenses and practicing otolaryngologist, and one practicing audiologist; provides for a conflict-of-interest provision for all board members; provides for staggered terms of six years; provides for board representation by the Attorney General and District and County Attorneys of Texas; prohibits a registered lobbyist from serving as a board member or as general counsel to the board; provides grounds for removal; and subjects the board to the Texas Sunset Act with expiration date extended to September 1, 1993; requires compliance with open meetings law and the Administrative Procedure Act; protects validity of Board action though grounds for removal of a board member exists.

Sec. 3: Deletes board activities notice procedures.

Sec. 6: Deletes outdated examination qualifications; provides for objective and consistent licensing examinations; states that those failing examination will be retested only on portions of exam failed; allows the Board to refuse an examination if the applicant has been convicted of a felony or misdemeanor involving moral turpitude; requires board to notify examinee of test results; and requires board to furnish analysis of performance to persons failing examination.

Sec. 9: Requires the establishment of guidelines for the training and supervision of temporary permit holders; and requires establishment of outline for both formal and practical training.

Sec. 10: Deletes "Refusal To License And Revocation Or Suspension Of License Grounds" from section title. Clarifies and updates grounds for disciplinary actions; provides broader range of enforcement penalties; subjects

temporary trainees to board's enforcement; and deletes advertising provisions except for those that are false, misleading or deceptive.

Sec. 11: Provides for hearing procedures to be governed by the Administrative Procedure and Texas Register Act; and provides procedures for disciplinary actions.

Sec. 12: Provides for establishment of reasonable and necessary fees within established ceiling by the board and deletes statutorily set fees; allows each board member per diem as determined by the General Appropriations Act, as well as travel expenses for board and its employees and actual expenses for executive director; and requires fees to be deposited in General Revenue and that the cost of administration of the Act be provided from the General Revenue Fund; requires state audit.

Sec. 13: Establishes standard delinquent license renewal periods and penalties.

Sec. 19: Deletes exemptions for non-profit organizations and for employees of physicians; and provides exemption for certified audiologist not selling hearing aids.

SECTION 2: Amends Article 4566-1.01 et seq., V.T.C.S. by adding Sections 4A, 12A, and 12B:

Sec. 4A: Requires development of an intra-agency career ladder program; requires development of a performance evaluation upon which merit pay is based; and permits development of an optional continuing education program.

Sec. 12A: Prohibits the promulgation of rules restricting advertising and competitive bidding except that which is false, misleading or deceptive.

Sec. 12B: Requires preparation of consumer information regarding operations and functions of the board; requires the board to set up a complaint file and provide periodic notification of parties to complaints; requires written contract to contain address and telephone number of the board and same information to be displayed at place of business; establishes a trial period on hearing aid purchases; and requires the board to establish guidelines for this trial period.

SECTION 3: Repealer.

SECTION 4: Provides for continuation of terms of board members holding office on effective date of this Act.

SECTION 5: Repeals Sections 7 and 20, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.01 et. seq., V.T.C.S.)

SECTION 6: Repeals Subdivision 7, Subsection (a), Section 15, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as amended by Section 3, Chapter 796, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4566-1.15(a) (7), V.T.C.S.)

SECTION 7: Amends Article 4566-1.14, V.T.C.S. is amended by adding Subsection (e) to Section 14:

Subsection (e): Adds requirement that licensees gather some information on persons who are "prospective candidates for amplification", including but not limited to case histories and otoscopic inspection of the ear.

SECTION 8: Effective date, and implementation dates.

SECTION 9: Emergency clause.

Rulemaking Authority

Under C.S.S.B. 604, the Board of Examiners in the Fitting and Dispensing of Hearing Aids may adopt rules to prohibit false, misleading, or deceptive practices by a person with regard to competitive bidding or advertising. Allows Board authority to establish guidelines for a) education, both formal

and practical, for the training of temporary permit holders, and b) a 30-day trial period on the purchase of a hearing aid.

Substantial Differences

Major differences between S.B. 604 and C.S.S.B. 604 include Sunset related recommendations -- nondiscriminatory appointments to the board; compliance with open meeting and Administrative Procedures Act; development of career ladder, performance evaluation, and optional continuing education; and state audits.

Summary of Committee Action

Public notice was posted in accordance with Rule 3.084, Rules of Procedure of the House of Representatives, and a public hearing was held on Wednesday, April 22, 1981.

The bill was referred to a subcommittee consisting of the following members: Representatives Don Henderson, Reby Cary, Arnold Gonzales, Juan Hinojosa, and Chip Staniswalis. On Thursday, April 30, 1981 the measure was reported to the full committee with a substitute.

On Monday, May 11, 1981, the full committee voted to report S.B. 604 to the House with a substitute and the recommendation that it do pass by a record vote of eight ayes, no nays, and one present not voting.

The following persons testified in favor of S.B. 604:

Ollie B. Livingston, representing himself
Roy F. Brakebill, representing himself
Dick Durbin, representing the Texas Hearing Aid Association
Dr. Patricia Cole, representing the Texas Speech and Hearing Association

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

MAY 14 1981

May 14, 1981

Honorable Charles W. Evans, Chairman
Committee on Government Organization
House of Representatives
Austin, Texas

In Re: Committee Substitute for
Senate Bill No. 604
By: Doggett

Sir:

In response to your request pursuant to House Rules, Section 3.119, this office finds the fiscal implications of Committee Substitute for Senate Bill No. 604 (relating to continuation of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids and regulation of the fitters and dispensers of hearing aid devices) to be as follows:

The bill would make no appropriation but could provide the legal basis for a request for funds to implement the provisions of the bill.

The State Board of Examiners in the Fitting and Dispensing of Hearing Aids is subject to the provisions of the Texas Sunset Act, and unless continued in existence by the Legislature, will be abolished effective September 1, 1981.

The bill, should it be enacted, would continue the existence of the Board of Examiners in the Fitting and Dispensing of Hearing Aids, require the development of guidelines for temporary trainees and require the dissemination of information to the public.

The amount set forth for this agency in the General Appropriations Bill, as introduced (FY 1982 - \$48,437, FY 1983 - \$51,189), would be contingent, if approved, upon passage of Senate Bill No. 604 or similar legislation. These appropriations would be financed from the General Revenue Fund No. 1, and would provide for approximately 1.5 State employees.

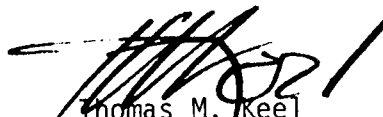
In addition to the recommended appropriations, the probable fiscal implication of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

<u>Fiscal Year</u>	<u>Probable Cost Out of the General Revenue Fund</u>
1982	\$1,000
1983	1,000
1984	1,000
1985	1,000
1986	1,000

It should be noted that this agency collects fees which are deposited to the General Revenue Fund. The bill would give the board members of the agency the authority to adjust the agency fees so that the total fees collected would be sufficient to meet the level of appropriation set by the Legislature. In order for fee revenues to meet recommended appropriations plus the cost of this bill, it is estimated that increased fee revenues of approximately \$3,000 per year would need to be generated.

The financial implications of the bill in future years may reasonably be expected to approximate the recommended appropriation level, plus the additional recommendations of the Sunset Advisory Commission, for fiscal years 1982 and 1983, but would, in fact, depend upon future decisions of the Texas Legislature.

No fiscal implication or additional cost to units of local government attributable to the bill, should it be enacted, is anticipated.


Thomas M. Keel
Director

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 13, 1981

APR 13 1981

Honorable Charles W. Evans, Chairman
Committee on Government Organization
House of Representatives
Austin, Texas

In Re: Senate Bill No. 604, as engrossed
By: Doggett

Sir:

In response to your request pursuant to House Rules, Section 3.119, this office finds the fiscal implications of Senate Bill No. 604, as engrossed (relating to continuation of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids and regulation of the fitters and dispensers of hearing aid devices), to be as follows:

The bill would make no appropriation but could provide the legal basis for a request for funds to implement the provisions of the bill.

The State Board of Examiners in the Fitting and Dispensing of Hearing Aids is subject to the provisions of the Texas Sunset Act, and unless continued in existence by the Legislature, will be abolished effective September 1, 1981.

The bill, should it be enacted, would continue the existence of the Board of Examiners in the Fitting and Dispensing of Hearing Aids, require the development of guidelines for temporary trainees and require the dissemination of information to the public.

The amount set forth for this agency in the General Appropriations Bill, as introduced (FY 1982 \$48,437, FY 1983 \$51,189), would be contingent, if approved, upon passage of Senate Bill No. 604 or similar legislation. These appropriations would be financed from the General Revenue Fund No. 1, and would provide for approximately 1.5 State employees.

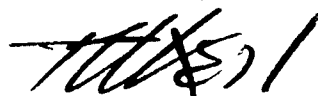
In addition to the recommended appropriations, the probable fiscal implication of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

<u>Fiscal Year</u>	<u>Probable Cost Out of the General Revenue Fund</u>
1982	\$1,000
1983	1,000
1984	1,000
1985	1,000
1986	1,000

It should be noted that this agency collects fees which are deposited to the General Revenue Fund. The bill would give the board members of the agency the authority to adjust the agency fees so that the total fees collected would be sufficient to meet the level of appropriation set by the Legislature. In order for fee revenues to meet recommended appropriations plus the cost of this bill, it is estimated that increased fee revenues of approximately \$3,000 per year would need to be generated.

The financial implications of the bill in future years may reasonably be expected to approximate the recommended appropriation level, plus the additional recommendations of the Sunset Advisory Commission, for fiscal years 1982 and 1983, but would in fact depend upon future decisions of the Texas Legislature.

No fiscal implication or additional cost to units of local government attributable to the bill, should it be enacted, is anticipated.


Thomas M. Keel
Director

Source: Texas Board of Examiners in the Fitting
and Dispensing of Hearing Aids; LBB Staff: TK, JH, KS, BL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 1, 1981

Honorable Chet Brooks, Chairman
Committee on Human Resources
Senate Chamber
Austin, Texas

In Re: Senate Bill No. 604
By: Doggett

Sir:

In response to your request pursuant to Senate Rule 94, Subsection (g), this office finds the fiscal implications of Senate Bill No. 604 (relating to continuation of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids and regulation of the fitters and dispensers of hearing aid devices) to be as follows:

The bill would make no appropriation but could provide the legal basis for a request for funds to implement the provisions of the bill.

The State Board of Examiners in the Fitting and Dispensing of Hearing Aids is subject to the provisions of the Texas Sunset Act, and unless continued in existence by the Legislature, will be abolished effective September 1, 1981.

The bill, should it be enacted, would continue the existence of the Board of Examiners in the Fitting and Dispensing of Hearing Aids, require the development of guidelines for temporary trainees and require the dissemination of information to the public.

The amount set forth for this agency in the General Appropriations Bill, as introduced (FY 1982 \$48,437, FY 1983 \$51,189), would be contingent, if approved, upon passage of SB 604 or similar legislation. These appropriations would be financed from the General Revenue Fund No. 1, and would provide for approximately 1.5 state employees.

In addition to the recommended appropriations, the probable fiscal implication of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

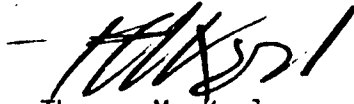
<u>Fiscal</u> <u>Year</u>	<u>Probable Cost</u> <u>Out of the</u> <u>General Revenue Fund</u>	
1982	\$	1,000
1983		1,000
1984		1,000
1985		1,000
1986		1,000

It should be noted that this agency collects fees which are deposited to the General Revenue Fund. The bill would give the board members of the agency the authority to adjust the agency fees so that the total fees collected would be sufficient to meet the level of appropriation set by the Legislature. In order for fee revenues to meet recommended appropriations plus the cost of this bill, it is estimated that increased fee revenues of approximately \$3,000 per year would need to be generated.

April 1, 1981

The financial implications of the bill in future years may reasonable be expected to approximate the recommended appropriation level, plus the additional recommendations of the Sunset Advisory Commission, for fiscal years 1982 and 1983, but would in fact depend upon future decisions of the Texas Legislature.

No fiscal implication or additional cost to units of local government attributable to the bill, should it be enacted, is anticipated.



Thomas M. Keel
Director

Source: Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids;
LBB Staff: TK, JH, KS, PA

and its Membership, terms, authority and
duties, and qualifications and compensation
of its members and its procedures and funds;
providing for fees;

ADOPTED

MAY 25 1981

Betty Murray
Chief Clerk
House of Representatives

311
PSee

By Doggett

S.B. No. 604

Substitute the following for S.B. No. 604:

By Evans

C.S.S.B. No. 604

A BILL TO BE ENTITLED

AN ACT

relating to continuation of the Texas Board of Examiners in the
Fitting and Dispensing of Hearing Aids, and ^{providing for the} regulation of ~~the~~
fitters and dispensers of hearing aid devices;

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 1, 2, 3, 6, 9, 10, 11, 12, 13, and 19,
Chapter 366, Acts of the 61st Legislature, Regular Session, 1969,
as amended (Article 4566-1.01 et seq., Vernon's Texas Civil
Statutes), are amended to read as follows:

"Section 1. DEFINITIONS. In this Act, unless the context
requires a different definition:

"(a) 'Board' means the Texas Board of Examiners in the
Fitting and Dispensing of Hearing Aids.

"(b) 'License' means license issued by the Board under this
Act to a person authorized to fit and dispense hearing aids.

"(c) 'Temporary Training Permit' means a permit issued by the
Board to persons authorized to fit and dispense hearing aids only
under the supervision of a person who holds a license under this
Act.

"(d) 'Hearing aid' means any instrument or device designed
for, or represented as, aiding, improving or correcting defective
human hearing, but as used herein shall not mean repair services,
replacements for defective parts and shall not include batteries,
cords and accessories.

1 “(e) “Sell” or “sale” includes a transfer of title or of the
 2 right to use by lease, bailment, or any other contract. Provided,
 3 for the purpose of this Act, the term “sell” or “sale” shall not
 4 include sales at wholesale by manufacturers to persons licensed
 5 under this Act, or to distributors for distribution and sale to
 6 persons licensed under this Act.

7 “(f) “Fitting and Dispensing hearing aids” means the
 8 measurement of human hearing by the use of an audiometer or by any
 9 means for the purpose of making selections, adaptations and/or
 10 sales of hearing aids. The term also includes the sale of hearing
 11 aids, and the making of impressions for earmolds to be used as a
 12 part of the hearing aid.

13 “(g) “30-day trial period” means the period in which a person
 14 may cancel the purchase of a hearing aid.

15 “Sec. ^{h m}2. BOARD OF EXAMINERS. (a) The Texas Board of
 16 Examiners in the Fitting and Dispensing of Hearing Aids is hereby
 17 created. The Board shall be composed of nine members appointed by
 18 the Governor with the advice and consent of the senate.
 19 Appointments shall be made without regard to the race, creed, sex,
 20 religion, or national origin of the appointees. The Board members
 21 must have [with] the following qualifications, to-wit:

22 “(1) ^[Six] Five of such members shall possess the necessary
 23 qualifications to fit and dispense hearing aids in this state and
 24 have been residents of this state actually engaged in fitting and
 25 dispensing hearing aids for at least five years immediately
 26 preceding their appointment. No more than two of such ^[Six] five members
 27 shall be employed by, franchised by, or associated exclusively with

1 the same hearing aid manufacturer;

2 "(2) Two board members must be members of the general public.

3 A person is eligible for appointment as a public member if the
 4 person and the person's spouse are not licensed by an occupational
 5 regulatory agency in the field of health care; are not employed by
 6 and do not participate in the management of a business entity or
 7 other organization that provides health-care services or that
 8 sells, manufactures, or distributes health-care supplies or
 9 equipment; and do not own, control, or have, directly or
 10 indirectly, an interest in a business entity or other organization
 11 that provides health-care services or that sells, manufactures, or
 12 distributes health-care supplies or equipment [One-of-such--members
 13 shall--be--a--citizen--of--the-United-States-and-a-resident-of-this
 14 state-for-a-period-of-at-least-two-years-immediately-preceding--his
 15 appointment--and-such-member-shall-not-have-a-finaneial-interest-in
 16 a-hearing-aid-manufacturing-company--or--a--wholesale--hearing--aid
 17 company];

18 "(3) One of such members shall be a citizen of the United
 19 States and a resident of this state for a period of at least two
 20 years immediately preceding his appointment, shall be an active
 21 practicing physician or surgeon duly licensed to practice in this
 22 state by the Texas State Board of Medical Examiners, and specialize
 23 in the practice of otolaryngology. Such member shall not have a
 24 financial interest in a hearing aid manufacturing company or a
 25 wholesale or retail hearing aid company; and

26 "(4) One of such members shall be a citizen of the United
 27 States and a resident of this state for a period of at least two

1 years immediately preceding his appointment and shall be an active
 2 practicing audiologist. Such member shall not have a financial
 3 interest in a hearing aid manufacturing company or a wholesale or
 4 retail hearing aid company.

5 \ (b) One who has served two full consecutive terms on the
 6 Board shall not be eligible for a reappointment to the Board for a
 7 period of 12 months immediately following the expiration of the
 8 second full term.

9 \ (c) In the event of death, resignation or removal of any
 10 members, the vacancy of the unexpired terms shall be filled by the
 11 Governor in the same manner as other appointments. Each appointee
 12 to the Board shall, within 15 days from the date of his
 13 appointment, qualify by taking the constitutional oath of office.
 14 Upon presentation of such oath, the Secretary of State shall issue
 15 commissions to appointees as evidence of their authority to act as
 16 members of the Board.

17 \ (d) Members hold office for staggered terms of six years,
 18 and each member shall continue until a successor is appointed and
 19 qualifies. [~~The members of the initial Board, to be appointed by~~
 20 ~~the Governor to take office on the effective date of this Act,~~
 21 ~~shall be divided into three classes, to wit: Class One, Class Two,~~
 22 ~~and Class Three, and their terms of office shall be determined by~~
 23 ~~lot at the first meeting of the Board. The three Class One members~~
 24 ~~shall hold office for two years, and the three Class Two members~~
 25 ~~shall hold office for four years, and the three Class Three members~~
 26 ~~shall hold office for six years respectively, from the time of~~
 27 ~~their appointment. Biennially thereafter, the Governor shall~~

1 ~~appoint-three-members-of-the-Board-to-hold-office-for-a-term-of-six~~
2 ~~years-]~~

3 “(e) The Board shall be represented by the Attorney General
4 and the District and County Attorneys of the state.

5 “(f) A person who is required to register as a lobbyist under
6 Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973,
7 as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may
8 not serve as a member of the Board or act as the general counsel to
9 the Board.

10 “(g) A member or employee of the Board may not be an officer,
11 employee, or paid consultant of a statewide or national trade
12 association in the hearing aid industry. A member or employee of
13 the Board may not be related within the second degree by affinity
14 or consanguinity to a person who is an officer, employee, or paid
15 consultant of a statewide or national trade association in the
16 regulated industry.

17 “(h) It is a ground for removal from the Board if a member:

18 “(1) does not have at the time of appointment the
19 qualifications required by Subsection (a) of this section for
20 appointment to the Board;

21 “(2) does not maintain during his service on the Board the⁵
22 qualifications required by Subsection (a) of this section for
23 appointment to the Board;

24 “(3) violates a prohibition established by Subsection (f) or
25 (g) of this section; or

26 “(4) fails to attend at least half of the regularly scheduled
27 Board meetings held in a calendar year, excluding meetings held

1 while the person was not a Board member.

2 \(i) The validity of an action of the Board is not affected
 3 by the fact that it was taken when a ground for removal of a member
 4 of the Board existed.

5 \(j) [f] The Texas Board of Examiners in the Fitting and
 6 Dispensing of Hearing Aids is subject to the Texas Sunset Act, as
 7 amended (Article 5429k, Vernon's Texas Civil Statutes); and unless
 8 continued in existence as provided by that Act the board is
 9 abolished, and this Act expires effective September 1, 1993 [1981].

10 \(k) The Board is subject to the open meetings law, Chapter
 11 271, Acts of the 60th Legislature, Regular Session, 1967, as
 12 amended (Article 6252-17, Vernon's Texas Civil Statutes), and the
 13 Administrative Procedure and Texas Register Act, as amended
 14 (Article 6252-13a, Vernon's Texas Civil Statutes).

15 Secⁿ 3. BOARD ORGANIZATION AND MEETINGS. Within 60 days
 16 after their appointment and qualification the initial Board shall
 17 hold its first meeting and elect a President, Vice-President, and
 18 Secretary-Treasurer. The term of office for all officers of the
 19 Board shall be for a period of one year.

20 The Board shall hold regular meetings at least twice a year
 21 at which an examination of applicants for license shall be given.
 22 [Not-less-than-30-days-notice-of-such-meeting--shall--be--given--by
 23 publication---in---at--least--three--daily--newspapers--of--general
 24 circulation-to-be-selected-by-the-Board--Written--notice--of--such
 25 regular--meetings-of-the-Board-shall-be-given-to-the-members-by-the
 26 Secretary-Treasurer-of-the-Board-by-certified-mail-not-less-than-30
 27 days-prior-to-the-date-of-such-regular-meeting.] Special meetings

1 of the Board shall be held upon [~~the-written~~] request of a majority
 2 of the members or upon the call of the President. [~~Written-notice~~
 3 ~~of-such-special-meetings-of-the-Board-shall-be-given-to-members--by~~
 4 ~~the--Secretary-Treasurer--of--the--Board-by-certified-mail-not-less~~
 5 ~~than-30-days-prior--to--the--date--of--the--special--meetings-~~] A
 6 majority of the Board shall constitute a quorum for the transaction
 7 of business and should a quorum not be present on the day appointed
 8 for any meeting, those present may adjourn from day to day until a
 9 quorum be present provided such period shall not be longer than
 10 three successive days."

11 ^W
 12 "Sec^W 6. EXAMINATION: APPLICATION. (a) Every person
 13 desiring to engage in fitting and dispensing hearing aids in the
 14 State of Texas shall be required to pass an examination given by
 15 the Texas Board of Examiners in the Fitting and Dispensing of
 16 Hearing Aids.

17 "(b) The applicant shall make application, furnishing to the
 18 Secretary-Treasurer of the Board on forms to be furnished by the
 19 Board, sworn evidence that he has attained the age of majority [18
 20 ~~years--is-of--good--moral--character--is--free--of--contagious--or~~
 21 ~~infectious--disease-~~] and has graduated from an accredited high
 22 school or equivalent, and such other information as the Board may
 23 deem necessary for the enforcement of this Act.

24 "(c) The examination shall consist of written, oral or
 25 practical tests that shall be objective in method and applied in a
 26 consistent manner. The examination shall cover the following areas
 27 as they relate to the fitting and dispensing of hearing aids [in
the-following-areas-as-they-pertain-to-the-fitting--and--dispensing

1 of-hearing-aids,-to-wit]:

2 \ (1) Basic physics of sound;

3 \ (2) The structure and function of hearing aids;

4 \ (3) Fitting of hearing aids;

5 \ (4) Pure tone audiometry, including air conduction testing
6 and bone conduction testing;

7 \ (5) Live voice and/or record voice speech audiometry;

8 \ (6) Masking when indicated;

9 \ (7) Recording and evaluation of audiograms and speech
10 audiometry to determine the hearing aid candidacy;

11 \ (8) Selection and adaption of hearing aids and testing of
12 hearing aids; and

13 \ (9) Taking of earmold impressions.

14 \ (d) No part of the examination shall consist of tests
15 requiring knowledge of the diagnosis and/or treatment of any
16 disease or injury to the human body.

17 \ (e) Each applicant shall be given due notice of the date and
18 place of the examination and the subjects, areas, and/or skills
19 that will be included within such examination, and there shall be
20 no changes in said subjects, areas, and/or skills after the date of
21 the examination has been announced and publicized [~~nor-shall--there~~
22 ~~be--more--than--one--change-or-group-of-changes-in-any-one-calendar~~
23 ~~year~~]. All examinations shall be conducted in writing and by such
24 other means as the Board shall determine adequate to ascertain the
25 qualifications of applicants. Upon reexamination, a person who has
26 previously failed shall be examined only on those portions of the
27 examination which he failed. [All-applicants-examined-during-a

1 ~~given-ealendar-year-shall-be-given-the--same--examination.]~~ Every
 2 applicant successfully passing the examination and meeting all the
 3 requirements of this Act shall be registered by the Board as
 4 possessing the qualifications required by this Act and shall
 5 receive from the Board a license to fit and dispense hearing aids
 6 in this state.

7 (f) The Board, in its discretion, may refuse to examine an
 8 applicant if he has been convicted of a felony or a misdemeanor
 9 that involved moral turpitude.

10 (g) Within 30 days after the date a licensing examination is
 11 administered under this Act, the Board shall notify each examinee
 12 of the results of the examination. However, if an examination is
 13 graded or reviewed by a national testing service, the Board shall
 14 notify each examinee of the results of the examination within two
 15 weeks after the date the Board receives the results from the
 16 testing service. If the notice of the examination results will be
 17 delayed for more than 90 days after the examination date, the Board
 18 shall notify each examinee of the reason for the delay before the
 19 90th day. If requested in writing by a person who fails the
 20 licensing examination administered under this Act, the Board shall
 21 furnish the person with an analysis of⁹the person's performance on
 22 the examination. ¹⁰

23 Section 9. TEMPORARY TRAINING PERMIT. (a) The Board shall
 24 grant a temporary training permit to fit and dispense hearing aids
 25 to any person applying to the Board who has never taken the
 26 examination provided in the Act and who possesses the
 27 qualifications in Subsection (b) of Section 6, of this Act, upon

1 written application to the Secretary-Treasurer of the Board, the
2 applicant shall make application on forms to be furnished by the
3 Board furnishing sworn evidence that he possesses the
4 qualifications contained in Subsection (b), Section 6, of this Act,
5 that he has never taken the examination provided in this Act, and
6 that he has never previously been issued a temporary training
7 permit to fit and dispense hearing aids by the Board.

8 \\(b) The application for a temporary permit shall be
9 accompanied by the affidavit of a person duly licensed and
10 qualified to fit and dispense hearing aids in this state. The
11 accompanying affidavit shall state that the applicant, if granted a
12 temporary training permit, will be supervised by the affiant in all
13 work done by applicant under such temporary training permit, that
14 affiant will notify the Board within 10 days following applicant's
15 terminating of supervision by affiant.

16 \\(c) A temporary training permit shall authorize the holder
17 thereof, to fit and dispense hearing aids for a period of one year
18 or until the holder thereof shall have successfully passed the
19 examination required for a license under this Act, whichever occurs
20 first.

21 \\(d) A temporary training permit shall automatically become
22 void at the end of the period of 6 months from the date of its
23 issuance unless extended for an additional period not to exceed 6
24 months by the Board. The Board shall never extend a temporary
25 training permit more than one time.

26 \\(e) The Board shall establish educational guidelines, both
27 formal and practical, for the training of temporary permit holders.

The training guidelines shall include directions to the training supervisor about subject matter to be taught, length of the training period, extent of trainee contact with the public, and responsibility of the training supervisor for direct supervision of all aspects of the training period.

Section 10. GROUND FOR DISCIPLINARY ACTIONS [REFUSAL--TO LICENSE-AND-REVOCATION-OR--SUSPENSION--OF--LICENSE--GROUND]. The Board shall revoke or suspend a permit or license, place on probation a person whose permit or license has been suspended, or reprimand a permittee or licensee for any of the following violations [The Board may, in its discretion, refuse to issue a license to any applicant and may cancel, revoke or suspend the operation of any license by it granted, for any of the following reasons]:

“(1) The applicant or licensee is guilty of gross immorality.

“(2) The applicant or licensee is unfit or incompetent by reason of negligence.]

“(1) [(3)] The temporary trainee [applicant] or licensee is guilty of any fraud, deceit or misrepresentation in the fitting and dispensing of hearing aids or in his seeking of a license under this Act.

“(2) [(4)] The temporary trainee [applicant] or licensee is [has been] convicted of a felony or a misdemeanor which involves [involved] moral turpitude.

“(3) The temporary trainee or licensee is unable to fit and dispense hearing aids with reasonable skill and safety to customers

by reason of incompetence, age, illness, drunkenness, excessive use
of drugs, narcotics, chemicals, or any other type of material or as
a result of any condition causing the temporary trainee or licensee
to become mentally or physically incapable as determined by a court
of competent jurisdiction [(5)--The--applicant--or--licensee--is--a
habitual--drunkard--or-is-addicted-to-the-use-of-morphine, cocaine,
or-other-drugs-having-similar-effects-or-has-become-insane--or--has
been-adjudged-by-a-court-of-competent-jurisdiction-to-be-of-unsound
mind].

' (4) [(6)] The temporary trainee [~~applicant~~] or licensee has violated any of the provisions of this Act or Board rules.

“(5) [77] The licensee has knowingly, directly or indirectly employed, hired, procured, or induced a person not licensed to fit and dispense hearing aids in this state, to so fit and dispense hearing aids.

"(6) [†8] The licensee aids or abets any person not duly licensed under this Act in the fitting or dispensing of hearing aids.

"(7) [(9)] The licensee lends, leases, rents, or in any other manner places his license at the disposal or in the service of any person not licensed to fit and dispense hearing aids in this ~~state~~ ^{state}.

"(8) [10] The licensee knowingly used or caused or promoted the use of any advertising matter, promotional literature, guarantees, warranty, disseminated or published with misleading, deceiving or false information. It is the intention of the Legislature that the provisions of this subdivision [Subsection 10]--and--the-following Subsection-(11)] be interpreted insofar as

1 possible to coincide with the orders and rules of the Federal Trade
2 Commission on such subjects.

3 \ [(11) --The licensee advertised a particular model, type or
4 kind of hearing aid for sale when purchasers or prospective
5 purchasers responding to the advertisement cannot purchase or are
6 dissuaded from purchasing the advertised model, type or kind when
7 it is established that the purpose of the advertisement is to
8 obtain prospects for the sale of a different model, type or kind
9 than was advertised.]

10 \ (9) [(12)] The licensee represented that the service or
11 advice of a person licensed to practice medicine by the Texas State
12 Board of Medical Examiners is used or made available in the
13 selection, fitting, adjustment, maintenance, or repair of a hearing
14 aid when such representation was not true.

15 \ (10) [(13)] The licensee used the term "doctor," "clinic" or
16 any like words, abbreviations or symbols in the conduct of his
17 business which would tend to connote that the licensee was a
18 physician or surgeon.

19 \ [(14) --The licensee defamed another licensee under this Act
20 by falsely imputing to him dishonorable conduct, inability to
21 perform contracts, questionable credit standing, or any other false
22 representation or falsely disparaging the products of such other
23 licensee in any respect, or the business methods, selling prices,
24 values, credit terms, policies, or services of such other licensee.

25 \ [(15) --The licensee displayed competitive products in his
26 place of business, or in the advertising in such manner as to
27 falsely disparage them.

1 \ [(16) -- The licensee quoted prices of competitive hearing aids
 2 or devices without disclosing that the prices were not the present,
 3 correct, -- current -- prices, -- or -- falsely -- showed, -- demonstrated -- or
 4 represented -- competitive -- hearing aids models as being the correct,
 5 current model of such hearing aids.

6 \ [(17) -- The licensee -- imitated -- or -- simulated -- the -- trademark,
 7 tradename, -- brand, -- or -- label of another licensee under this Act with
 8 the -- intent -- to -- mislead -- or -- deceive -- purchasers -- or -- prospective
 9 purchasers.

10 \ [(18) -- The -- licensee -- used in his advertising the name, -- model
 11 name or trademark of a particular manufacturer of hearing aids with
 12 the intent to falsely imply a relationship with -- such -- manufacturer
 13 that does not exist.]

14 \ (11) [(19)] The licensee obtained or attempted to obtain
 15 information concerning the business of another licensee under this
 16 Act by bribery, or attempting to bribe an employee or agent of such
 17 other licensee or by the impersonation of one in authority.

18 \ (12) [(20)] The licensee directly or indirectly gave, or
 19 offered to give or permitted or caused to be given money or
 20 anything of value to any person who advises others in a
 21 professional capacity as an inducement to influence such person to
 22 influence those persons such person advises in a professional
 23 capacity to purchase or contract to purchase products sold or
 24 offered for sale by licensee or to refrain from purchasing or
 25 contracting to purchase products sold or offered for sale by any
 26 other licensee under this Act.

27 \ (13) [(21)] The licensee falsely represented to a purchaser

1 that a hearing aid was "custom-made," "made to order,"
 2 "prescription-made" or any other representations that such hearing
 3 aid was specially fabricated for the purchaser.

4 "(14) [(22)] The licensee refused to accept responsibility
 5 for the acts of a temporary training permittee in a licensee's
 6 employ and under licensee's supervision.

7 "(15) [(23)] The licensee with fraudulent intent, engaged in
 8 the fitting and dispensing of hearing aids under a false name or
 9 alias.

10 "[(24) --The licensee had failed--to--actively--engage--in--the
 11 fitting--and--dispensing--of--hearing--aids--for--a-period-of-three
 12 consecutive-years-]

13 "Sec¹¹ 11. DISCIPLINARY ACTIONS [PROCEDURE]. (a) If the
 14 Board proposes to refuse a person's application for examination, to
 15 suspend or revoke a person's license, or to probate or reprimand a
 16 person, the person is entitled to a hearing before the Board.

17 "(b) The proceedings are governed by the Administrative
 18 Procedure and Texas Register Act, as amended (Article 6252-13a,
 19 Vernon's Texas Civil Statutes).

20 "(c) [(a)] Proceedings [for-revocation--or--suspension--of--a
 21 license] shall be commenced by filing charges with the Board in
 22 writing and under oath. The charges may be made by any person or
 23 persons.

24 "(d) [(b)] The president of the Board shall fix a time and
 25 place for a hearing and shall cause a copy of the charges, together
 26 with a notice of the time and place fixed for the hearing to be
 27 served upon the applicant or licensee against whom charges have

1 been filed at least 30 days prior thereto. Service of such charges
2 and notice of hearing thereon may be given by certified mail to the
3 last known address of such licensee or applicant.

4 \ (e) [{e}] At the hearing, such applicant or licensee shall
5 have the right to appear either personally or by counsel or both to
6 produce witnesses, and to have subpoenas issued by the Board and
7 cross-examine opposing or adverse witnesses.

8 \ (f) [{d}] The Board shall not be bound by strict rules of
9 procedure or by the laws of evidence in the conduct of its
10 proceedings but the determination shall be founded upon sufficient
11 legal evidence to sustain it.

12 \ (g) [{e}] The Board shall determine the charges upon their
13 merits. The Board shall enter an order in the permanent records of
14 the Board setting forth the findings of fact and law of the Board
15 and its action thereon. A copy of such order of the Board shall be
16 mailed to such applicant or licensee to his last known address by
17 certified mail.

18 \ (h) [{f}] Any person whose license to fit and dispense
19 hearing aids has been refused or has been cancelled, revoked or
20 suspended by the Board, may, within 20 days after making and
21 entering of such order, take an appeal to any district court of
22 Travis County or any district court of the county of his residence.

23 \ (i) [{g} --A--case--reviewed--under--the--provisions--of--this
24 section--proceeds--in--such-district-court-by-trial-de-novo-as-that
25 term-is-used-and-understood-in-appeals-from-justice--of--the--peace
26 courts--to--the--county--courts--of--this--state.] Appeal from the
27 judgment of such district court will lie as other civil cases.

1 ~~(j)~~ [b] Upon application, the Board may reissue a license
 2 to fit and dispense hearing aids to a person whose license has been
 3 cancelled or revoked but such application shall not be made prior
 4 to the expiration of a period of six months after the order of
 5 cancellation or revocation has become final, and such application
 6 shall be made in such manner and form as the Board may require.

7 " ^{him} Sec 12. FEES AND EXPENSES. (a) The Board shall establish
 8 reasonable and necessary fees for the administration of this Act
 9 in amounts not to exceed:

10 " 1. <u>Temporary Training Permit</u>	\$ 40
11 " 2. <u>Examination Fee</u>	125
12 " 3. <u>License Fee</u>	75
13 " 4. <u>License Renewal Fee</u>	195
14 " 5. <u>Duplicate Document Fee</u>	10

15 ← [charge-a
 16 fee-of-\$25.00-for-issuing-a-temporary-training-permit;--which--fee
 17 must-accompany-the-application-for-a-temporary-training-permit].

18 " (b) [The-Board-shall-charge-a-fee-of-\$35.00-for-examining-an
 19 applicant--for-a-license,--which-fee-must-accompany-the-application-¹²

20 " [c]--The-Board-shall-charge-a-fee-of-\$50.00--for--issuing--a
 21 license-

22 " [d]--Any--person-making-application-for-a-license-without-an
 23 examination-as-provided-in-Sections-7-and-8-must--submit--such--fee
 24 with-such-application-

25 " ~~(1)~~ [2] Every person passing the examination and meeting the
 requirements of the Board shall be notified that he is eligible for
 such license upon payment of the fee herein provided. Such notice

1 shall be by certified mail at the address given on his examination
 2 papers. The fee for issuance of such license must be paid by the
 3 applicant within 90 days after having been notified. Failure to
 4 pay such fee within such time shall constitute a waiver of the
 5 right to such person to obtain his license.

6 ~~\\ [(d) --The--Board--shall--charge--a--fee--of--\$5.00--for--each~~
 7 ~~duplicate-license-or-duplicate-temporary-training-permit.]~~

8 ~~\\ (c) [(e)]~~ The Secretary-Treasurer of the Board shall, on or
 9 before the 10th day of each month, remit to the State Treasurer all
 10 of the fees collected by the Board during the preceding month for
 11 deposit in the General Revenue Fund.

12 ~~\\ (d) Each member of the board is entitled to a per diem as set by legisla-~~
 13 ~~tive appropriation for each day that the member engages in the business of the board~~
 14 ~~A member may not receive any compensation for travel expenses, including expenses~~
 15 ~~for meals and lodging, other than transportation expenses. A member is entitled to~~
 16 ~~compensation for transportation expenses as prescribed by the general appropriations~~
 17 ~~act. [Each member of the Board is entitled to a per diem of \$30 for each day he is~~
 18 ~~engaged in performance of the duties of his office.]~~ The travel expenses allowance 3K
 19 for members of the Board and its employees shall be provided in the General Appro-
 20 priations Act. The executive director of the Board shall be allowed his actual
 21 expenses incurred while traveling on official business for the Board.

22
 23
 24 ~~\\ (e) [(g)]~~ The number of days for which compensation may be
 25 paid to members of the Board shall not exceed two days in *any*
 26 calendar month except in those months in which examinations are
 27 held, but compensations may never be allowed to exceed six days in

those months in which examinations are held.

\(f) [h] The Board may authorize all necessary disbursements to carry out the provisions of this Act, including payment of the premium on the bond of the Secretary-Treasurer, stationery expenses, purchase and maintain or rent equipment and facilities necessary to carry out the examinations of applications for license; pay for printing of all licenses; rent and furnish an office to maintain the permanent records of the Board.

\(g) [i] Funds for the administration of this Act shall be provided by the General Appropriations Act from the General Revenue Fund. The state auditor shall audit the financial transactions of the board each fiscal year.

\(j) ~~--The balance of all money remaining in the Fitting and Dispensing of Hearing Aids Fund account on August 31, 1979, is transferred to the General Revenue Fund.]~~

^{Section} 13. RENEWAL OF LICENSE. (a) Each license to fit and dispense hearing aids shall be issued for the term of one year and shall, unless suspended or revoked, be renewed annually on September 1 on payment of the renewal fee. 19/20

\(b) A person may renew his unexpired license by paying to the Board before the expiration date of the license the required renewal fee.

\(c) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the Board the required renewal fee and a fee that is one-half of the examination fee for the license.

\(d) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by

1 paying to the Board all unpaid renewal fees and a fee that is equal
 2 to the examination fee for the license.

3 "(e) If a person's license has been expired for two years or
 4 more, the person may not renew the license. The person may obtain
 5 a new license by submitting to reexamination and complying with the
 6 requirements and procedures for obtaining an original license.

7 "(f) Before a license can be renewed, the Board shall require
 8 certification that all testing equipment, both portable and
 9 stationary, used by the licensee has been calibrated within one
 10 year prior to the renewal date. [On-or-before-the-first-day-of
 11 January, 1972, every licensee under this Act shall pay to the
 12 Secretary-Treasurer of the Board an annual renewal fee of \$67.50
 13 for the renewal of his license to fit and dispense hearing aids for
 14 the year 1972. On-or-before-the-first-day-of January, 1973, and
 15 every year thereafter, every licensee under this Act shall pay to
 16 the Secretary-Treasurer of the Board an annual renewal fee of
 17 \$125.00 for renewal of his license to fit and dispense hearing aids
 18 for the current year. On receipt of said renewal fee, the Board
 19 shall issue an annual renewal certificate bearing the number of his
 20 license, the year for which it is renewed, and such other
 21 information from the records of the Board as the Board may deem
 22 necessary for the proper enforcement of this Act.

23 "(b) When a licensee shall fail to pay his annual renewal
 24 fee by February 1st of each year, it shall be the duty of the Board
 25 to notify such licensee by certified mail at his last known address
 26 that said annual renewal fee is due and unpaid; if the annual
 27 renewal fee is not paid within 60 days from the said date of

~~mailing-such-notice,-the-Board-shall-then-cancel-said-license.]~~

\\(g) [(e)] Fitting and dispensing hearing aids without an annual renewal certificate for the current year as provided herein shall have the same force and effect and be subject to the same penalties as fitting and dispensing hearing aids without a license.

\\[(d)--After-the-Board-shall--have--cancelled--a--license--for nonpayment-of-the-annual-renewal-fee,-the-Board-may-refuse-to-issue a--new--license-until-such-fitter-and-dispenser-of-hearing-aids-has paid-all-previous-unpaid-annual-fees.]

\\(h) [(e)] The Board shall issue a duplicate license to any licensee whose license has been lost or destroyed and the Board shall have the authority to prescribe the procedure and requirements for the issuance of the duplicate license. //

\\Sec^{hon} 19. EXCEPTIONS. Nothing in this Act shall be construed to apply to the following:

\\(1) Persons engaged in the practice of measuring human hearing as a part of the academic curriculum of an accredited institution of higher learning, provided such persons or their employees do not sell hearing aids.

\\(2) [Persons-engaged-in--the--practice--of--measuring--human hearing---as---a--part--of--a--program--conducted--by--a--nonprofit organization,-provided-such-organization-or-its-employees-does--not sell-hearing-aids-

\\[(3)] Physicians and surgeons duly licensed by the Texas State Board of Medical Examiners and qualified to practice in the State of Texas.

\\(3) An individual with a master's or doctorate degree in

audiology from an accredited college or university may engage in the measurement of human hearing by the use of an audiometer or by any means for the purpose of making selections and adaptations of or recommendations for a hearing aid, provided such persons do not sell hearing aids.

" [(4) -- Persons employed and directly supervised by a physician and surgeon to test or measure human hearing, provided such persons do not sell hearing aids.] "

SECTION 2. Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Sections. 4A, 12A, and 12B to read as follows:

" Sec⁵ 4A. PERSONNEL POLICIES. (a) The President of the Board or his designee shall develop an intra^fagency career ladder program, one part of which shall be the intra^fagency posting of all non^fentry level positions for at least 10 days before any public posting.

" (b) The President of the Board or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for Board employees must be based on the system established under this subsection.

" The board may recognize, prepare, or carry out continuing education programs for its licensees.

Participation in the programs is voluntary.

" Sec¹² 12A. ADVERTISEMENTS. The Board may not adopt rules restricting competitive bidding or advertising by a person regulated by the Board except to prohibit false, misleading, or deceptive practices by the person. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the Board a rule that:

1 "(1) restricts the person's use of any medium for
2 advertising;

3 "(2) restricts the person's personal appearance or use of his
4 voice in an advertisement;

5 "(3) relates to the size or duration of an advertisement by
6 the person; or

7 "(4) restricts the person's advertisement under a trade name.

8 "Sec^{hon} 12B. CONSUMER INFORMATION AND COMPLAINTS. (a) The
9 Board shall prepare information of consumer interest describing the
10 regulatory functions of the Board and the Board's procedures by
11 which consumer complaints are filed with and resolved by the Board.
12 The Board shall make the information available to the general
13 public and appropriate state agencies.

14 "(b) Each written contract for services in this state of a
15 licensed hearing aid fitter and dispenser shall contain the name,
16 mailing address, and telephone number of the Board. There shall at
17 all times be prominently displayed in the place of business of each
18 licensee regulated under this Act a sign containing the name,
19 mailing address, and telephone number of the Board and a statement
20 informing consumers that complaints against licensees can be
21 directed to the Board.

22 "(c) The Board shall establish guidelines for a 30-day trial
23 period on every hearing aid purchased from a licensed hearing aid
24 fitter and dispenser.

25 "(d) The Board shall keep an information file about each
26 complaint filed with the Board relating to a licensee. If a
27 written complaint is filed with the Board relating to a licensee,

1 the Board, at least as frequently as quarterly and until final
 2 disposition of the complaint, shall notify the parties to the
 3 complaint of the status of the complaint unless the notice would
 4 jeopardize an undercover investigation. // 7/2/81

5 SECTION 3. A rule adopted by the Texas Board of Examiners in
 6 the Fitting and Dispensing of Hearing Aids before September 1,
 7 1981, that conflicts with Chapter 366, Acts of the 61st
 8 Legislature, Regular Session, 1969 (Article 4566-1.01 et seq.,
 9 Vernon's Texas Civil Statutes), as amended by this Act, is void.
 10 Within 90 days after September 1, 1981, the board shall repeal the -
 11 rule. *Insert House am. #1*

12 SECTION 4. A person holding office as a member of the Texas
 13 Board of Examiners in the Fitting and Dispensing of Hearing Aids on
 14 the effective date of this Act continues to hold the office for the
 15 term for which the member was originally appointed.

16 SECTION 5. Sections 7 and 20, Chapter 366, Acts of the 61st
 17 Legislature, Regular Session, 1969 (Article 4566-1.01 et seq.,
 18 Vernon's Texas Civil Statutes), are repealed.

19 SECTION 6. Subdivision 7, Subsection (a), Section 15,
 20 Chapter 366, Acts of the 61st Legislature, Regular Session, 1969,
 21 as amended by Section 3, Chapter 796, Acts of the 62nd Legislature,
 22 Regular Session, 1971 (Article 4566-1.15(a)(7), Vernon's Texas
 23 Civil Statutes), is repealed.

24 SECTION 7. Section 14, Chapter 366, Acts of the 61st
 25 Legislature, Regular Session, 1969, as amended (Article 4566-1.14,
 26 Vernon's Texas Civil Statutes), is amended by adding Subsection (e)
 27 to read as follows:

1 \ (e) Any individual licensed under this Act shall seek
2 personally or through proper referral channels to obtain the
3 following minimal information on each prospective candidate for
4 amplification:

5 \ (1) pertinent case history;

6 \ (2) otoscopic inspection of the outer ear, including canal
7 and drumhead;

8 \ (3) evaluation of hearing acuity utilizing puretone
9 techniques via air and bone conduction pathways through a
10 calibrated system; and

11 \ (4) an aided and unaided speech reception threshold and
12 ability to differentiate between the phonemic elements of the
13 language through speech audiometry, utilizing a calibrated system.

14 SECTION 8. (a) This Act takes effect September 1, 1981.

15 (b) The requirements under Section 4A, Chapter 366, Acts of
16 the 61st Legislature, Regular Session, 1969, as added by this Act,
17 that the president of the board develop an intra^{agency} career
18 ladder program and a system of annual performance evaluations,
19 shall be implemented before September 1, 1982. The requirement of
20 Section 4A that merit pay ~~is to~~ be based on the performance
21 evaluation system shall be implemented before September 1, 1983.

22 SECTION 9. The importance of this legislation and the
23 crowded condition of the calendars in both houses create an
24 emergency and an imperative public necessity that the
25 constitutional rule requiring bills to be read on three several
26 days in each house be suspended, and this rule is hereby suspended.

① Amended CSSB 604 by adding the following language on p 24 line 11 after "rule."

If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the board/commission statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the board/commission receives the committee's statements.

ADOPTED

MAY 25 1981

Betty Mussey
Chief Clerk
House of Representatives

JP
5-28-81

House am. #①

ADOPTED

MAY 26 1981

Betty Murray
Chief Clerk
House of Representatives

3rd READING

JP 5-28-81

AMENDMENT NO. 1

BY *Edwards*

1 Amend Second Reading Amendment 1 to C.S.S.B. 604 to read as
2 follows:

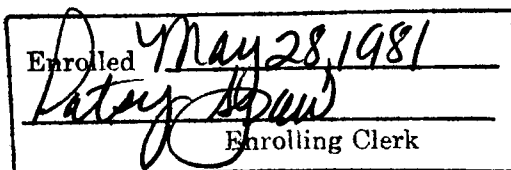
3 AMENDMENT NO. 1

4 Amend C.S.S.B. 604 as follows:

5 ✓ (1) On page 22, line 12, after "4A," insert "4B,".

6 (2) On page 22, after line 25, insert the following:

7 Section 4B. LEGISLATIVE REVIEW OF RULES. If the appropriate
8 standing committees of both houses of the legislature acting under
9 Subsection (g), Section 5, Administrative Procedure and Texas
10 Register Act, as amended (Article 6252-13a, Vernon's Texas Civil
11 Statutes), transmit to the Board statements opposing adoption of a
12 rule under that section, the rule may not take effect, or if the
13 rule has already taken effect, the rule is repealed effective on
14 the date the Board receives the committees' statements."



S.B. No. 604

AN ACT

relating to continuation of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids and its membership, terms, authority and duties, and qualifications and compensation of its members and its procedures and funds; providing for fees; and providing for the regulation of fitters and dispensers of hearing aid devices; amending Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), by amending Sections 1, 2, 3, 6, 9, 10, 11, 12, 13, and 19; adding Sections 4A, 4B, 12A, and 12B and Subsection (e) to Section 14; and repealing Subdivision (7), Subsection (a), Section 15 and Sections 7 and 20.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 1, 2, 3, 6, 9, 10, 11, 12, 13, and 19, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), are amended to read as follows:

"Section 1. DEFINITIONS. In this Act, unless the context requires a different definition:

"(a) 'Board' means the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.

"(b) 'License' means license issued by the Board under this Act to a person authorized to fit and dispense hearing aids.

"(c) 'Temporary Training Permit' means a permit issued by the Board to persons authorized to fit and dispense hearing aids only under the supervision of a person who holds a license under

1 this Act.

2 "(d) 'Hearing aid' means any instrument or device designed
3 for, or represented as, aiding, improving or correcting defective
4 human hearing, but as used herein shall not mean repair services,
5 replacements for defective parts and shall not include batteries,
6 cords and accessories.

7 "(e) 'Sell' or 'sale' includes a transfer of title or of the
8 right to use by lease, bailment, or any other contract. Provided,
9 for the purpose of this Act, the term 'sell' or 'sale' shall not
10 include sales at wholesale by manufacturers to persons licensed
11 under this Act, or to distributors for distribution and sale to
12 persons licensed under this Act.

13 "(f) 'Fitting and Dispensing hearing aids' means the
14 measurement of human hearing by the use of an audiometer or by any
15 means for the purpose of making selections, adaptations and/or
16 sales of hearing aids. The term also includes the sale of hearing
17 aids, and the making of impressions for earmolds to be used as a
18 part of the hearing aid.

19 "(g) '30-day trial period' means the period in which a
20 person may cancel the purchase of a hearing aid.

21 "Section 2. BOARD OF EXAMINERS. (a) The Texas Board of
22 Examiners in the Fitting and Dispensing of Hearing Aids is hereby
23 created. The Board shall be composed of nine members appointed by
24 the Governor with the advice and consent of the Senate.
25 Appointments shall be made without regard to the race, creed, sex,
26 religion, or national origin of the appointees. The Board members
27 must have [with] the following qualifications, to-wit:

"(1) Five [Six] of such members shall possess the necessary qualifications to fit and dispense hearing aids in this state and have been residents of this state actually engaged in fitting and dispensing hearing aids for at least five years immediately preceding their appointment. No more than two of such five [six] members shall be employed by, franchised by, or associated exclusively with the same hearing aid manufacturer;

"(2) Two Board members must be members of the general public. A person is eligible for appointment as a public member if the person and the person's spouse are not licensed by an occupational regulatory agency in the field of health care; are not employed by and do not participate in the management of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; and do not own, control, or have, directly or indirectly, an interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment [~~One-of-such--members shall--be--a--citizen--of--the-United-States-and-a-resident-of-this state-for-a-period-of-at-least-two-years-immediately-preceding--his appointment--and-such-member-shall-not-have-a-financial-interest-in a-hearing-aid-manufacturing-company--or--a--wholesale--hearing--aid company~~];

"(3) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment, shall be an active practicing physician or surgeon duly licensed to practice in this

1 state by the Texas State Board of Medical Examiners, and specialize
2 in the practice of otolaryngology. Such member shall not have a
3 financial interest in a hearing aid manufacturing company or a
4 wholesale or retail hearing aid company; and

5 "(4) One of such members shall be a citizen of the United
6 States and a resident of this state for a period of at least two
7 years immediately preceding his appointment and shall be an active
8 practicing audiologist. Such member shall not have a financial
9 interest in a hearing aid manufacturing company or a wholesale or
10 retail hearing aid company.

11 "(b) One who has served two full consecutive terms on the
12 Board shall not be eligible for a reappointment to the Board for a
13 period of 12 months immediately following the expiration of the
14 second full term.

15 "(c) In the event of death, resignation or removal of any
16 members, the vacancy of the unexpired terms shall be filled by the
17 Governor in the same manner as other appointments. Each appointee
18 to the Board shall, within 15 days from the date of his
19 appointment, qualify by taking the constitutional oath of office.
20 Upon presentation of such oath, the Secretary of State shall issue
21 commissions to appointees as evidence of their authority to act as
22 members of the Board.

23 "(d) Members hold office for staggered terms of six years,
24 and each member shall continue until a successor is appointed and
25 qualifies. [~~The members of the initial Board, to be appointed by~~
26 ~~the Governor, to take office on the effective date of this Act,~~
27 ~~shall be divided into three classes, to wit: Class One, Class Two,~~

and-Class-Three;-and-their-terms-of-office-shall-be--determined--by
 let-at-the-first-meeting-of-the-Board.---The-three-Class-One-members
 shall--hold--office--for-two-years;-and-the-three-Class-Two-members
 shall-hold-office-for-four-years;-and-the-three-Class-Three-members
 shall-hold-office-for-six-years--respectively;--from--the--time--of
 their--appointment.---Biennially--thereafter;--the--Governor--shall
 appoint-three-members-of-the-Board-to-hold-office-for-a-term-of-six
 years.]

"(e) The Board shall be represented by the Attorney General
 and the District and County Attorneys of the state.

"(f) A person who is required to register as a lobbyist
 under Chapter 422, Acts of the 63rd Legislature, Regular Session,
 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes),
 may not serve as a member of the Board or act as the general
 counsel to the Board.

"(g) A member or employee of the Board may not be an
 officer, employee, or paid consultant of a statewide or national
 trade association in the hearing aid industry. A member or
 employee of the Board may not be related within the second degree
 by affinity or consanguinity to a person who is an officer,
 employee, or paid consultant of a statewide or national trade
 association in the regulated industry.

"(h) It is a ground for removal from the Board if a member:

"(1) does not have at the time of appointment the
 qualifications required by Subsection (a) of this section for
 appointment to the Board;

"(2) does not maintain during his service on the Board the

1 qualifications required by Subsection (a) of this section for
2 appointment to the Board;

3 "(3) violates a prohibition established by Subsection (f) or
4 (g) of this section; or

5 "(4) fails to attend at least half of the regularly
6 scheduled Board meetings held in a calendar year, excluding
7 meetings held while the person was not a Board member.

8 "(i) The validity of an action of the Board is not affected
9 by the fact that it was taken when a ground for removal of a member
10 of the Board existed.

11 "(j) [~~f~~] The Texas Board of Examiners in the Fitting and
12 Dispensing of Hearing Aids is subject to the Texas Sunset Act, as
13 amended (Article 5429k, Vernon's Texas Civil Statutes); and unless
14 continued in existence as provided by that Act the board is
15 abolished, and this Act expires effective September 1, 1993 [~~1981~~].

16 "(k) The Board is subject to the open meetings law, Chapter
17 271, Acts of the 60th Legislature, Regular Session, 1967, as
18 amended (Article 6252-17, Vernon's Texas Civil Statutes), and the
19 Administrative Procedure and Texas Register Act, as amended
20 (Article 6252-13a, Vernon's Texas Civil Statutes).

21 "Section 3. BOARD ORGANIZATION AND MEETINGS. Within 60 days
22 after their appointment and qualification the initial Board shall
23 hold its first meeting and elect a President, Vice-President, and
24 Secretary-Treasurer. The term of office for all officers of the
25 Board shall be for a period of one year.

26 "The Board shall hold regular meetings at least twice a year
27 at which an examination of applicants for license shall be given.

1 [Not-less-than-30-days-notice-of-such-meeting--shall--be--given--by
 2 publication---in---at--least--three--daily--newspapers--of--general
 3 circulation-to-be-selected-by-the-Board--Written--notice--of--such
 4 regular--meetings-of-the-Board-shall-be-given-to-the-members-by-the
 5 Secretary-Treasurer-of-the-Board-by-certified-mail-not-less-than-30
 6 days-prior-to-the-date-of-such-regular-meeting-] Special meetings
 7 of the Board shall be held upon [the-written] request of a majority
 8 of the members or upon the call of the President. [Written-notice
 9 of-such-special-meetings-of-the-Board-shall-be-given-to-members--by
 10 the--Secretary-Treasurer--of--the--Board-by-certified-mail-not-less
 11 than-30-days-prior--to--the--date--of--the--special--meetings-] A
 12 majority of the Board shall constitute a quorum for the transaction
 13 of business and should a quorum not be present on the day appointed
 14 for any meeting, those present may adjourn from day to day until a
 15 quorum be present provided such period shall not be longer than
 16 three successive days."

17 "Section 6. EXAMINATION: APPLICATION. (a) Every person
 18 desiring to engage in fitting and dispensing hearing aids in the
 19 State of Texas shall be required to pass an examination given by
 20 the Texas Board of Examiners in the Fitting and Dispensing of
 21 Hearing Aids.

22 "(b) The applicant shall make application, furnishing to the
 23 Secretary-Treasurer of the Board on forms to be furnished by the
 24 Board, sworn evidence that he has attained the age of majority [18
 25 years,--is--of--good--moral--character,--is--free--of--contagious-or
 26 infectious-disease,] and has graduated from an accredited high
 27 school or equivalent, and such other information as the Board may

1 deem necessary for the enforcement of this Act.

2 "(c) The examination shall consist of written, oral or
3 practical tests that shall be objective in method and applied in a
4 consistent manner. The examination shall cover the following areas
5 as they relate to the fitting and dispensing of hearing aids [~~in~~
6 ~~the--following--areas-as-they-pertain-to-the-fitting-and-dispensing~~
7 ~~of-hearing-aids,--to-wit~~]:

8 "(1) Basic physics of sound;

9 "(2) The structure and function of hearing aids;

10 "(3) Fitting of hearing aids;

11 "(4) Pure tone audiometry, including air conduction testing
12 and bone conduction testing;

13 "(5) Live voice and/or record voice speech audiometry;

14 "(6) Masking when indicated;

15 "(7) Recording and evaluation of audiograms and speech
16 audiometry to determine the hearing aid candidacy;

17 "(8) Selection and adaption of hearing aids and testing of
18 hearing aids; and

19 "(9) Taking of earmold impressions.

20 "(d) No part of the examination shall consist of tests
21 requiring knowledge of the diagnosis and/or treatment of any
22 disease or injury to the human body.

23 "(e) Each applicant shall be given due notice of the date
24 and place of the examination and the subjects, areas, and/or skills
25 that will be included within such examination, and there shall be
26 no changes in said subjects, areas, and/or skills after the date of
27 the examination has been announced and publicized [~~nor-shall-there~~

1 ~~be more than one change or group of changes in any one calendar~~
2 ~~year]~~. All examinations shall be conducted in writing and by such
3 other means as the Board shall determine adequate to ascertain the
4 qualifications of applicants. Upon reexamination, a person who has
5 previously failed shall be examined only on those portions of the
6 examination which he failed. [~~All applicants examined during a~~
7 ~~given calendar year shall be given the same examination.] Every~~
8 applicant successfully passing the examination and meeting all the
9 requirements of this Act shall be registered by the Board as
10 possessing the qualifications required by this Act and shall
11 receive from the Board a license to fit and dispense hearing aids
12 in this state.

13 "(f) The Board, in its discretion, may refuse to examine an
14 applicant if he has been convicted of a felony or a misdemeanor
15 that involved moral turpitude.

16 "(g) Within 30 days after the date a licensing examination
17 is administered under this Act, the Board shall notify each
18 examinee of the results of the examination. However, if an
19 examination is graded or reviewed by a national testing service,
20 the Board shall notify each examinee of the results of the
21 examination within two weeks after the date the Board receives the
22 results from the testing service. If the notice of the examination
23 results will be delayed for more than 90 days after the examination
24 date, the Board shall notify each examinee of the reason
25 for the delay before the 90th day. If requested in writing
26 by a person who fails the licensing examination administered under
27 this Act, the Board shall furnish the person with an analysis of

1 the person's performance on the examination."

2 "Section 9. TEMPORARY TRAINING PERMIT. (a) The Board shall
3 grant a temporary training permit to fit and dispense hearing aids
4 to any person applying to the Board who has never taken the
5 examination provided in the Act and who possesses the
6 qualifications in Subsection (b) of Section 6, of this Act, upon
7 written application to the Secretary-Treasurer of the Board, the
8 applicant shall make application on forms to be furnished by the
9 Board furnishing sworn evidence that he possesses the
10 qualifications contained in Subsection (b), Section 6, of this Act,
11 that he has never taken the examination provided in this Act, and
12 that he has never previously been issued a temporary training
13 permit to fit and dispense hearing aids by the Board.

14 "(b) The application for a temporary permit shall be
15 accompanied by the affidavit of a person duly licensed and
16 qualified to fit and dispense hearing aids in this state. The
17 accompanying affidavit shall state that the applicant, if granted a
18 temporary training permit, will be supervised by the affiant in all
19 work done by applicant under such temporary training permit, that
20 affiant will notify the Board within 10 days following applicant's
21 terminating of supervision by affiant.

22 "(c) A temporary training permit shall authorize the holder
23 thereof, to fit and dispense hearing aids for a period of one year
24 or until the holder thereof shall have successfully passed the
25 examination required for a license under this Act, whichever occurs
26 first.

27 "(d) A temporary training permit shall automatically become

void at the end of the period of 6 months from the date of its issuance unless extended for an additional period not to exceed 6 months by the Board. The Board shall never extend a temporary training permit more than one time.

"(e) The Board shall establish educational guidelines, both formal and practical, for the training of temporary permit holders. The training guidelines shall include directions to the training supervisor about subject matter to be taught, length of the training period, extent of trainee contact with the public, and responsibility of the training supervisor for direct supervision of all aspects of the training period.

"Section 10. GROUND FOR DISCIPLINARY ACTIONS [REFUSAL-TO LICENSE-AND-REVOCATION-OR--SUSPENSION--OF--LICENSE--GROUNDS]. The Board shall revoke or suspend a permit or license, place on probation a person whose permit or license has been suspended, or reprimand a permittee or licensee for any of the following violations [The-Board-may,-in-its-discretion,-refuse--to--issue--a license--to--any--applicant--and--may-cancel,-revoke-or-suspend-the operation-of-any-license-by-it-granted,-for-any--of--the--following reasons]:

"[(1) --The---applicant---or---licensee--is--guilty--of--gross immorality-

"[(2) --The-applicant-or-licensee-is-unfit-or--incompetent--by reason-of-negligence-]

"(1) [(3)] The temporary trainee [applicant] or licensee is guilty of any fraud, deceit or misrepresentation in the fitting and dispensing of hearing aids or in his seeking of a license under

1 this Act.

2 "(2) [4] The temporary trainee [applicant] or licensee is
3 [has--been] convicted of a felony or a misdemeanor which involves
4 [involved] moral turpitude.

5 "(3) The temporary trainee or licensee is unable to fit and
6 dispense hearing aids with reasonable skill and safety to customers
7 by reason of incompetence, age, illness, drunkenness, excessive use
8 of drugs, narcotics, chemicals, or any other type of material or as
9 a result of any condition causing the temporary trainee or licensee
10 to become mentally or physically incapable as determined by a court
11 of competent jurisdiction [5]--The--applicant--or--licensee--is--a
12 habitual--drunkard--or--is--addicted--to--the--use--of--morphine--cocaine--
13 or--ether--drugs--having--similar--effects--or--has--become--insane--or--has
14 been--adjudged--by--a--court--of--competent--jurisdiction--to--be--of--unsound
15 mind].

16 "(4) [6] The temporary trainee [applicant] or licensee
17 has violated any of the provisions of this Act or Board rules.

18 "(5) [7] The licensee has knowingly, directly or
19 indirectly employed, hired, procured, or induced a person not
20 licensed to fit and dispense hearing aids in this state, to so fit
21 and dispense hearing aids.

22 "(6) [8] The licensee aids or abets any person not duly
23 licensed under this Act in the fitting or dispensing of hearing
24 aids.

25 "(7) [9] The licensee lends, leases, rents, or in any
26 other manner places his license at the disposal or in the service
27 of any person not licensed to fit and dispense hearing aids in this

state.

"(8) [(10)] The licensee knowingly used or caused or promoted the use of any advertising matter, promotional literature, guarantees, warranty, disseminated or published with misleading, deceiving or false information. It is the intention of the Legislature that the provisions of this subdivision [Subsection (10)--and--the--following--Subsection--(11)] be interpreted insofar as possible to coincide with the orders and rules of the Federal Trade Commission on such subjects.

"[(11)--The--licensee--advertised--a--particular--model--type--or--kind--of--hearing--aid--for--sale--when--purchasers--or--prospective purchasers--responding--to--the--advertisement--cannot--purchase--or--are dissuaded--from--purchasing--the--advertised--model--type--or--kind--when it--is--established--that--the--purpose--of--the--advertisement--is--to obtain--prospects--for--the--sale--of--a--different--model--type--or--kind than--was--advertised.]

"(9) [(12)] The licensee represented that the service or advice of a person licensed to practice medicine by the Texas State Board of Medical Examiners is used or made available in the selection, fitting, adjustment, maintenance, or repair of a hearing aid when such representation was not true.

"(10) [(13)] The licensee used the term 'doctor,' 'clinic' or any like words, abbreviations or symbols in the conduct of his business which would tend to connote that the licensee was a physician or surgeon.

"[(14)--The--licensee--defamed--another--licensee--under--this--Act by--falsely--imputing--to--him--dishonorable--conduct--inability--to

perform-contrasts,-questionable-credit-standing,-or-any-other-false
representation--or--falsely--disparaging-the-products-of-such-other
licensee-in-any-respect,-or-the-business-methods,-selling--prices,
values,-credit-terms,-policies,-or-services-of-such-other-licensee.

"[(15) --The--licensee--displayed--competitive-products-in-his
place-of-business,-or-in-the--advertising--in--such--manner--as--to
falsely-disparage-them-

"[(16) --The--licensee--quoted--prices--of-competitive-hearing
aids-or-devices-without-disclosing-that-the--prices--were--not--the
present,-correct,-current-prices,-or-falsely-showed,-demonstrated
or--represented--competitive--hearing--aids--models--as--being--the
correct,-current-model-of-such-hearing-aids-

"[(17) --The--licensee--imitated--or--simulated-the-trademark,
tradename,-brand,-or-label-of-another-licensee-under-this-Act--with
the--intent--to--mislead--or--deceive--purchasers--or--prospective
purchasers-

"[(18) --The-licensee-used-in-his-advertising-the-name,-model
name-or-trademark-of-a-particular-manufacturer-of-hearing-aids-with
the--intent--to-falsely-imply-a-relationship-with-such-manufacturer
that-does-not-exist-]

"(11) [(19)] The licensee obtained or attempted to obtain
information concerning the business of another licensee under this
Act by bribery, or attempting to bribe an employee or agent of such
other licensee or by the impersonation of one in authority.

"(12) [(20)] The licensee directly or indirectly gave, or
offered to give or permitted or caused to be given money or
anything of value to any person who advises others in a

professional capacity as an inducement to influence such person to influence those persons such person advises in a professional capacity to purchase or contract to purchase products sold or offered for sale by licensee or to refrain from purchasing or contracting to purchase products sold or offered for sale by any other licensee under this Act.

"(13) [~~21~~] The licensee falsely represented to a purchaser that a hearing aid was 'custom-made,' 'made to order,' 'prescription-made' or any other representations that such hearing aid was specially fabricated for the purchaser.

"(14) [~~22~~] The licensee refused to accept responsibility for the acts of a temporary training permittee in a licensee's employ and under licensee's supervision.

"(15) [~~23~~] The licensee with fraudulent intent, engaged in the fitting and dispensing of hearing aids under a false name or alias

"[~~24~~]-The--licensee--had--failed--to--actively--engage--in--the--fitting--and--dispensing--of--hearing--aids--for--a--period--of--three--consecutive--years-]

"Section 11. DISCIPLINARY ACTIONS [PROCEDURE]. (a) If the Board proposes to refuse a person's application for examination, to suspend or revoke a person's license, or to probate or reprimand a person, the person is entitled to a hearing before the Board.

"(b) The proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

"(c) [~~a~~] Proceedings [for--revocation-or-suspension-of-a

1 license] shall be commenced by filing charges with the Board in
2 writing and under oath. The charges may be made by any person or
3 persons.

4 "(d) [~~(b)~~] The president of the Board shall fix a time and
5 place for a hearing and shall cause a copy of the charges, together
6 with a notice of the time and place fixed for the hearing to be
7 served upon the applicant or licensee against whom charges have
8 been filed at least 30 days prior thereto. Service of such charges
9 and notice of hearing thereon may be given by certified mail to the
10 last known address of such licensee or applicant.

11 "(e) [~~(e)~~] At the hearing, such applicant or licensee shall
12 have the right to appear either personally or by counsel or both to
13 produce witnesses, and to have subpoenas issued by the Board and
14 cross-examine opposing or adverse witnesses.

15 "(f) [~~(d)~~] The Board shall not be bound by strict rules of
16 procedure or by the laws of evidence in the conduct of its
17 proceedings but the determination shall be founded upon sufficient
18 legal evidence to sustain it.

19 "(g) [~~(e)~~] The Board shall determine the charges upon their
20 merits. The Board shall enter an order in the permanent records of
21 the Board setting forth the findings of fact and law of the Board
22 and its action thereon. A copy of such order of the Board shall be
23 mailed to such applicant or licensee to his last known address by
24 certified mail.

25 "(h) [~~(f)~~] Any person whose license to fit and dispense
26 hearing aids has been refused or has been cancelled, revoked or
27 suspended by the Board, may, within 20 days after making and

entering of such order, take an appeal to any district court of Travis County or any district court of the county of his residence.

"(i) [~~g~~]--A case--reviewed--under--the--provisions--of--this section--proceeds--in--such district court by trial de nove as that term is used and understood in appeals from justice--of--the--peace courts--to--the--county--courts--of--this--state.] Appeal from the judgment of such district court will lie as other civil cases.

"(j) [~~h~~] Upon application, the Board may reissue a license to fit and dispense hearing aids to a person whose license has been cancelled or revoked but such application shall not be made prior to the expiration of a period of six months after the order of cancellation or revocation has become final, and such application shall be made in such manner and form as the Board may require.

"Section 12. FEES AND EXPENSES. (a) The Board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed:

"1. Temporary Training Permit	\$ 40
"2. Examination Fee	125
"3. License Fee	75
"4. License Renewal Fee	195
"5. Duplicate Document Fee	10

[charge--a--fee--of--\$25.00--for--issuing--a--temporary--training--permit, which fee must accompany the application for a--temporary--training permit].

"(b) [The--Board--shall--charge--a--fee--of--\$35.00--for--examining an--applicant--for--a--license,--which--fee--must--accompany--the application.]

1 "~~(e)~~--The--Board--shall--charge--a--fee--of--\$50.00--for--issuing--a
2 license--

3 "~~(1)~~--Any--person--making--application--for--a--license--without--an
4 examination--as--provided--in--Sections--7--and--8--must--submit--such--fee
5 with--such--application--

6 "~~(2)~~] Every person passing the examination and meeting the
7 requirements of the Board shall be notified that he is eligible for
8 such license upon payment of the fee herein provided. Such notice
9 shall be by certified mail at the address given on his examination
10 papers. The fee for issuance of such license must be paid by the
11 applicant within 90 days after having been notified. Failure to
12 pay such fee within such time shall constitute a waiver of the
13 right to such person to obtain his license.

14 "~~(d)~~--The--Board--shall--charge--a--fee--of--\$5.00--for--each
15 duplicate--license--or--duplicate--temporary--training--permit--]

16 "(c) [~~(e)~~] The Secretary-Treasurer of the Board shall, on or
17 before the 10th day of each month, remit to the State Treasurer all
18 of the fees collected by the Board during the preceding month for
19 deposit in the General Revenue Fund.

20 "(d) Each member of the Board is entitled to a per diem as
21 set by legislative appropriation for each day that the member
22 engages in the business of the Board. A member may not receive any
23 compensation for travel expenses, including expenses for meals and
24 lodging, other than transportation expenses. A member is entitled
25 to compensation for transportation expenses as prescribed by the
26 General Appropriations Act. [~~(f)~~--Each--member--of--the--Board--is
27 entitled--to--a--per--diem--of--\$30--for--each--day--he--is--engaged--in

1 ~~performing---the--duties--of--his--office-~~ The travel expenses
 2 allowance for members of the Board and its employees shall be
 3 provided in the General Appropriations Act. The executive director
 4 of the Board shall be allowed his actual expenses incurred while
 5 traveling on official business for the Board.

6 "(e) [~~(g)~~] The number of days for which compensation may be
 7 paid to members of the Board shall not exceed two days in any
 8 calendar month except in those months in which examinations are
 9 held, but compensations may never be allowed to exceed six days in
 10 those months in which examinations are held.

11 "(f) [~~(h)~~] The Board may authorize all necessary
 12 disbursements to carry out the provisions of this Act, including
 13 payment of the premium on the bond of the Secretary-Treasurer,
 14 stationery expenses, purchase and maintain or rent equipment and
 15 facilities necessary to carry out the examinations of applications
 16 for license; pay for printing of all licenses; rent and furnish an
 17 office to maintain the permanent records of the Board.

18 "(g) [~~(i)~~] Funds for the administration of this Act shall be
 19 provided by the General Appropriations Act from the General Revenue
 20 Fund. The State Auditor shall audit the financial transactions of
 21 the Board each fiscal year.

22 "~~[(j)--The-balance-of-all-money-remaining-in-the-'Fitting-and~~
 23 ~~Dispensing--of--Hearing--Aids--Fund'-account-on-August-31,-1979,-is~~
 24 ~~transferred-to-the-General-Revenue-Fund-]~~

25 "Section 13. RENEWAL OF LICENSE. (a) Each license to fit
 26 and dispense hearing aids shall be issued for the term of one year
 27 and shall, unless suspended or revoked, be renewed annually on

1 September 1 on payment of the renewal fee.

2 "(b) A person may renew his unexpired license by paying to
3 the Board before the expiration date of the license the required
4 renewal fee.

5 "(c) If a person's license has been expired for not more
6 than 90 days, the person may renew the license by paying to the
7 Board the required renewal fee and a fee that is one-half of the
8 examination fee for the license.

9 "(d) If a person's license has been expired for more than 90
10 days but less than two years, the person may renew the license by
11 paying to the Board all unpaid renewal fees and a fee that is equal
12 to the examination fee for the license.

13 "(e) If a person's license has been expired for two years or
14 more, the person may not renew the license. The person may obtain
15 a new license by submitting to reexamination and complying with the
16 requirements and procedures for obtaining an original license.

17 "(f) Before a license can be renewed, the Board shall
18 require certification that all testing equipment, both portable and
19 stationary, used by the licensee has been calibrated within one
20 year prior to the renewal date. [On-or-before-the-first-day-of
21 January, 1972, every licensee under this Act shall pay to the
22 Secretary-Treasurer of the Board an annual renewal fee of \$67.50
23 for the renewal of his license to fit and dispense hearing aids for
24 the year 1972. On-or-before-the-first-day-of January, 1973, and
25 every year thereafter, every licensee under this Act shall pay to
26 the Secretary-Treasurer of the Board an annual renewal fee of
27 \$125.00 for renewal of his license to fit and dispense hearing aids

for-the-current-year--On-receipt-of-said-renewal--fee--the--Board
shall-issue-an-annual-renewal-certificate-bearing-the-number-of-his
license--the--year--for--which--it--is--renewed--and--such--other
information-from-the-records-of-the-Board-as--the--Board--may--deem
necessary-for-the-proper-enforcement-of-this-Act.

"[(b) --When--a--licensee-shall-fail-to-pay-his-annual-renewal
fee-by-February-1st-of-each-year--it-shall-be-the-duty-of-the-Board
to-notify-such-licensee-by-certified-mail-at-his-last-known-address
that-said-annual-renewal-fee-is--due--and--unpaid--if--the--annual
renewal--fee--is--not--paid--within--60--days-from-the-said-date-of
mailing-such-notice--the-Board-shall-then-cancel-said-license.]

"(g) [(e)] Fitting and dispensing hearing aids without an
annual renewal certificate for the current year as provided herein
shall have the same force and effect and be subject to the same
penalties as fitting and dispensing hearing aids without a license.

"[(d) --After--the--Board--shall--have-cancelled-a-license-for
nonpayment-of-the-annual-renewal-fee--the-Board-may-refuse-to-issue
a-new-license-until-such-fitter-and-dispenser-of-hearing--aids--has
paid-all-previous-unpaid-annual-fees.]

"(h) [(e)] The Board shall issue a duplicate license to any
licensee whose license has been lost or destroyed and the Board
shall have the authority to prescribe the procedure and
requirements for the issuance of the duplicate license."

"Section 19. EXCEPTIONS. Nothing in this Act shall be
construed to apply to the following:

"(1) Persons engaged in the practice of measuring human
hearing as a part of the academic curriculum of an accredited

1 institution of higher learning, provided such persons or their
2 employees do not sell hearing aids.

3 "(2) [~~Persons-engaged-in-the--practice--of--measuring--human~~
4 ~~hearing---as---a--part--of--a--program--conducted--by--a--nonprofit~~
5 ~~organization,--provided--such--organization--or--its--employees--does--not~~
6 ~~sell-hearing-aids-~~

7 "[~~3~~] Physicians and surgeons duly licensed by the Texas
8 State Board of Medical Examiners and qualified to practice in the
9 State of Texas.

10 "(3) An individual with a master's or doctorate degree in
11 audiology from an accredited college or university may engage in
12 the measurement of human hearing by the use of an audiometer or by
13 any means for the purpose of making selections and adaptations of
14 or recommendations for a hearing aid, provided such persons do not
15 sell hearing aids.

16 "[~~4~~]~~--Persens--employed--and--directly---supervised---by---a~~
17 ~~physician--and--surgeon--to--test--or--measure--human--hearing,--provided~~
18 ~~such-persens--do--not--sell-hearing-aids-]~~"

19 SECTION 2. Chapter 366, Acts of the 61st Legislature,
20 Regular Session, 1969, as amended (Article 4566-1.01 et seq.,
21 Vernon's Texas Civil Statutes), is amended by adding Sections 4A,
22 4B, 12A, and 12B to read as follows:

23 "Section 4A. PERSONNEL POLICIES. (a) The President of the
24 Board or his designee shall develop an intraagency career ladder
25 program, one part of which shall be the intraagency posting of all
26 nonentry level positions for at least 10 days before any public
27 posting.

1 "(b) The President of the Board or his designee shall
 2 develop a system of annual performance evaluations based on
 3 measurable job tasks. All merit pay for Board employees must be
 4 based on the system established under this subsection.

5 "The Board may recognize, prepare, or carry out continuing
 6 education programs for its licensees. Participation in the
 7 programs is voluntary.

8 "Section 4B. LEGISLATIVE REVIEW OF RULES. If the
 9 appropriate standing committees of both houses of the legislature
 10 acting under Subsection (g), Section 5, Administrative Procedure
 11 and Texas Register Act, as amended (Article 6252-13a, Vernon's
 12 Texas Civil Statutes), transmit to the Board statements opposing
 13 adoption of a rule under that section, the rule may not take
 14 effect, or if the rule has already taken effect, the rule is
 15 repealed effective on the date the Board receives the committees'
 16 statements."

17 "Section 12A. ADVERTISEMENTS. The Board may not adopt rules
 18 restricting competitive bidding or advertising by a person
 19 regulated by the Board except to prohibit false, misleading, or
 20 deceptive practices by the person. The Board may not include in
 21 its rules to prohibit false, misleading, or deceptive practices by
 22 a person regulated by the Board a rule that:

23 "(1) restricts the person's use of any medium for
 24 advertising;

25 "(2) restricts the person's personal appearance or use of
 26 his voice in an advertisement;

27 "(3) relates to the size or duration of an advertisement by

1 the person; or

2 "(4) restricts the person's advertisement under a trade
3 name.

4 "Section 12B. CONSUMER INFORMATION AND COMPLAINTS. (a) The
5 Board shall prepare information of consumer interest describing the
6 regulatory functions of the Board and the Board's procedures by
7 which consumer complaints are filed with and resolved by the Board.
8 The Board shall make the information available to the general
9 public and appropriate state agencies.

10 "(b) Each written contract for services in this state of a
11 licensed hearing aid fitter and dispenser shall contain the name,
12 mailing address, and telephone number of the Board. There shall at
13 all times be prominently displayed in the place of business of each
14 licensee regulated under this Act a sign containing the name,
15 mailing address, and telephone number of the Board and a statement
16 informing consumers that complaints against licensees can be
17 directed to the Board.

18 "(c) The Board shall establish guidelines for a 30-day trial
19 period on every hearing aid purchased from a licensed hearing aid
20 fitter and dispenser.

21 "(d) The Board shall keep an information file about each
22 complaint filed with the Board relating to a licensee. If a
23 written complaint is filed with the Board relating to a licensee,
24 the Board, at least as frequently as quarterly and until final
25 disposition of the complaint, shall notify the parties to the
26 complaint of the status of the complaint unless the notice would
27 jeopardize an undercover investigation."

SECTION 3. A rule adopted by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids before September 1, 1981, that conflicts with Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after September 1, 1981, the board shall repeal the rule. If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the board/commission statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the board/commission receives the committee's statements.

SECTION 4. A person holding office as a member of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

SECTION 5. Sections 7 and 20, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), are repealed.

SECTION 6. Subdivision 7, Subsection (a), Section 15, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as amended by Section 3, Chapter 796, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4566-1.15(a)(7), Vernon's Texas Civil Statutes), is repealed.

SECTION 7. Section 14, Chapter 366, Acts of the 61st

Legislature, Regular Session, 1969, as amended (Article 4566-1.14, Vernon's Texas Civil Statutes), is amended by adding Subsection (e) to read as follows:

"(e) Any individual licensed under this Act shall seek personally or through proper referral channels to obtain the following minimal information on each prospective candidate for amplification:

"(1) pertinent case history;

"(2) otoscopic inspection of the outer ear, including canal and drumhead;

"(3) evaluation of hearing acuity utilizing puretone techniques via air and bone conduction pathways through a calibrated system; and

"(4) an aided and unaided speech reception threshold and ability to differentiate between the phonemic elements of the language through speech audiometry, utilizing a calibrated system."

SECTION 8. (a) This Act takes effect September 1, 1981.

(b) The requirements under Section 4A, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as added by this Act, that the president of the board develop an intraagency career ladder program and a system of annual performance evaluations shall be implemented before September 1, 1982. The requirement of Section 4A that merit pay be based on the performance evaluation system shall be implemented before September 1, 1983.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the

S.B. No. 604

- 1 constitutional rule requiring bills to be read on three several
2 days in each house be suspended, and this rule is hereby suspended.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 604 passed the Senate on April 6, 1981, by a viva-voce vote; and that the Senate concurred in House amendments on May 27, 1981, by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 604 passed the House, with amendments, on May 26, 1981, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor

S. B. No. 604

By Daggett

AN ACT relating to continuation of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids and regulation of the fitters and dispensers of hearing aid devices.

2-16-81

Filed with the Secretary of the Senate

FEB 17 1981 Read, referred to Committee on HUMAN RESOURCES

Reported favorably.

APR 2 1981 Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

APR 6 1981 Ordered not printed.

Senate and Constitutional Rules to permit consideration suspended by

unanimous consent.

years, nays.

To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of years, nays.

APR 6 1981

Read second time amended and ordered engrossed.
passed to third reading.

APR 6 1981

Caption ordered amended to conform to body of bill.

APR 6 1981

Senate and Constitutional 3-Day Rules suspended by vote of 39 yeas, 0 nays to place bill on third reading and final passage.

APR 6 1981

Read third time and passed by a viva-voce vote.

years, nays.

OTHER ACTION:

Betty King

Patsy Spaw
ENGROSSING CLERK

April 6, 1981 Engrossed

April 7, 1981 Sent to House

APR 7 1981 Received from the Senate

APR 8 1981 Read first time and referred to Committee on Government Organizations

5-11-81 Subs. Reported favorably amended, sent to Printer at 4:40pm

MAY 1 5 1981 Printed and Distributed 5:03pm MAY 1 4 1981

MAY 1 5 1981 Sent to Committee on Calendars 5:21 p.m.

MAY 2 5 1981 Read Second time amended Subs. passed to third reading (failed)
by (Non-Record Vote) Record Vote of years, nays
Present, not voting.

Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of years nays present not voting.

MAY 2 6 1981 Read third time amended finally passed (failed) by a (Non-Record Vote) Record Vote of years nays
Present, not voting.

MAY 2 6 1981 Caption ordered amended to conform to body of bill.

MAY 2 6 1981 Returned to Senate.

MAY 2 6 1981 RETURNED FROM HOUSE with amendments
MAY 2 7 1981 Senate concurred in House amendments by viva voce vote.

Betty Murray
Chief Clerk of the House